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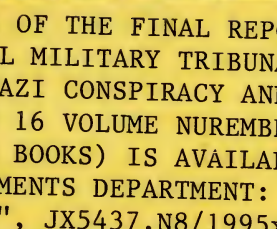

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VOLUME XIV

"THE MINISTRIES CASE"

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XIII. CLOSING STATEMENTS

A. Introduction

In section V, vol. XII, the complete opening statements for the prosecution and for the twenty-one individual defendants have been reproduced. The closing statements required over 7 days of hearing in open court and their recording in the mimeographed transcript covers 1066 pages; 146 pages for the prosecution closing and the prosecution rebuttal to the defense closings, and 920 pages for the defense closings. Additionally, the prosecution and each of the defendants filed final briefs totaling several thousands of mimeographed pages. Space limitations have prevented the reproduction here of most of this voluminous final argumentation, and since the closing statements, generally speaking, are more summary in nature than the final briefs, this section on final argumentation is devoted entirely to selections from the closing statements.

The prosecution's closing statement was devoted principally to argument on various points of law and to a very general analysis of the evidence, particularly of the leading defenses brought forth during the defense case-in-chief. The larger part of most of the defense closings was devoted to analysis of the facts concerning a particular defendant. However, a large part of some of the defense closings contain mainly general legal arguments, for example, the closing statement for the defendant Koerner. The prosecution's rebuttal statement to the defense closings was devoted principally to points of law raised by either defense counsel or the members of the Tribunal during the course of the closing statements of the defense.

This section includes the closing statement for the prosecution (sec. B); extracts from the closing statements for the defendants von Weizsaecker and Keppler (secs. C and D, respectively); the closing statement for the defendant Koerner (sec. E); extracts from the closing statements for the defendants Pleiger, Lammers, Schwerin von Krosigk, and Stuckart (secs. F through I, respectively); and the rebuttal of the prosecution to the closing statements of the defense (sec. J).

Those parts of the closing statements for defendants which are omitted herein, whole or in part, may be found in the mimeographed transcript, 9–12, 15–18 November, 1948, pages 27046–28007.

B. Closing Statement for the Prosecution[1]

PRESIDING JUDGE CHRISTIANSON: If the prosecution is now ready to present its final argument in this matter, we will hear it. And you have the day, as I understand it, one day for the making of the final argument of the prosecution.

MR. KEMPNER: Yes, Your Honor, I think so.

PRESIDING JUDGE CHRISTIANSON: You may go ahead. Have we been presented with copies of the arguments here? Well, we'll get them. I understand they have been delivered to our offices.[2] You may go ahead, Counsel.

INTRODUCTION

MR. KEMPNER: The close of this case brings to an end the long parade of evidence presented to the thirteen solemn Tribunals which have sat in judgment at Nuernberg. This awe-inspiring march of documents and witnesses began in November 1945 before the International Military Tribunal only a few days short of 3 years ago. In the course of a little more than these 3 years, Allied investigators have filed for official registration in the central document room of the courthouse, more than 61,000 documents. The large majority of these documents are "contemporaneous documents" written by German leaders or the assistants of German leaders during the Nazi era itself. These contemporaneous records constitute the unerasable, self-written history book concerning those men who for so long clung together for better or worse, for richer or poorer, in Hitler's Third Reich, until their ill-fated union began to crack in the last months of the Nazi era in the face of common defeat and the impending wreck of their booty-laden ship of state.

This growing source book of history has been the backbone of the Nuernberg story. What we say here, what this Tribunal finally says here, will be measured in terms of this now indestructible record of Hitler's Third Reich. It could not be otherwise, for time itself can afford few, if any, better gauges to a scientific inquiry into the role which individual men played in the history of these times than is already laid bare before us in this contemporaneous source book. And, in Germany itself, it is to this record that the true scholar, knowing that the Nazi limita-

[1] Closing statement for prosecution is recorded in mimeographed transcript, 9 November 1948, pages 26920–27044.

[2] Draft copies of the closing statement were circulated before the actual delivery in open Court to assist the translators and court reports and to afford the Tribunal and defense counsel with various detailed citations to authorities and evidence which were not fully read in open Court. Such citations have been reproduced herein for the convenience of the reader. These citations in some cases have been altered to refer to printed materials which were only in mimeographed form at the time.

tions on the process of inquiry have been removed, looks for an understanding of the unfortunate history of Germany from 1933 to 1945. Our words can add little to the condemnation which these contemporaneous records convey within their four corners, and we suggest that the explanations that the defendants and their witnesses have made are but a scant apology for such condemnation. One of the most distinguishing aspects of this particular trial is that far more of the contemporaneous documentation has passed before the scrutiny of this Tribunal than before any of the other twelve Tribunals convened in Nuernberg, not excluding the International Military Tribunal. In fact, when the International Military Tribunal ceased taking evidence in the summer of 1946, only a small fraction of this available evidence had been uncovered from the myriad of places where it lay buried in ruins or hidden away in the tons of paper work which reflected the business of these times. Indeed, if any substantial part of this newly discovered evidence had been available before the indictment was filed with the International Military Tribunal in October 1945, it is plain that more than a few of the defendants in this case would have accounted for his individual responsibility in that first great trial. Like the findings in the judgment of the International Military Tribunal, your findings upon the vast evidence in this record will be a significant factor among those factors which will finally reveal to all mankind that the leaders of nations, just as the common citizens of nations, may not, without a due accounting, commit evil upon mankind at will.

In summing up, the prosecution is anxious to observe the utmost economy of words and means. The burdens which this trial has imposed on the Tribunal and on counsel for the prosecution and defense alike have been heavy. On the part of the prosecution, we intend to embody our detailed analysis of the record, and our summation of the evidence as it relates to each individual defendant in the briefs which we will file.

In this oral summation, accordingly, we do not propose to deal exhaustively with each charge of the indictment nor with each defendant. To undertake a full and detailed exposition of this sort would, we think, prolong this statement unnecessarily and needlessly duplicate much of what will appear in our briefs. Today we shall attempt principally to emphasize the law of the case and to suggest its application with respect to these defendants.

Mr. Amchan will continue with the argument for the prosecution.

PRESIDING JUDGE CHRISTIANSON: Mr. Amchan, go ahead.

COUNTS ONE AND TWO—CRIMES AGAINST PEACE

MR. AMCHAN: We shall discuss at this point the legal questions presented in connection with counts one and two, relating to crimes against peace. First, we shall indicate the difference between counts one and two of the indictment. Second, the question of whether planning, preparation, and initiation of aggressive war is separate and distinct from the "waging" of aggressive war. Third, what is embraced in the concept of "waging" aggressive war, as distinguished from participation in the planning and preparation thereof. Fourth, in connection with the concept of waging of aggressive war, we shall discuss the relation of participation in plunder and spoliation and slave labor as they relate to crimes against peace. Fifth, we shall consider whether the invasion of Austria and Czechoslovakia come within the definition of crimes against peace, and what effect, if any, the absence of hostilities plays in that connection. Sixth, we shall consider the nature and effect of the defense raised, namely, that these defendants were engaged in preparation for a defensive war. In that connection, we shall discuss the effect of Ordinance No. 7.

Seventh, we shall analyze and review briefly the decisions of the Nuernberg Tribunals in the Krupp, Farben, and High Command cases as they relate to crimes against peace; and finally, we shall indicate what appears to us to be the principles to be applied in determining the guilt or innocence of the defendants in this case under counts one and two.

We have submitted a brief which discusses in some detail the legal questions indicated.

We propose in this oral argument to touch only the highlights of these questions. In view of the nature of the questions involved, we respectfully invite the Tribunal to interrupt the speaker at any time to ask questions which the Tribunal may consider necessary to clarify any doubtful points.

The Difference between Count One and Count Two

Count one charges the commission of crimes against peace, namely, the participation in planning, preparation, initiation, and waging of wars of aggression.

Count two charges participation as leaders, organizers, instigators, and accomplices in a conspiracy to commit the foregoing.

Although some of the Military Tribunals in Nuernberg have considered both of these counts to be one and the same thing, analysis will disclose that they are not one and the same thing. We have discussed this point in detail in our brief. In this oral presentation, we desire to demonstrate the point by referring to one or two cases.

The IMT, likewise, had two counts, charging crimes against peace which were set up in the same way. The counts of that indictment, however, were in the reverse order to the counts in this case—that is, the IMT count one was the "conspiracy" count, and count two was the count charging "planning, preparation, initiation, and waging of war." In the judgment of the IMT, dealing with these specific counts, some of the defendants were found guilty under the planning, preparation, and waging of war count, but were acquitted of the conspiracy count. Some were indicted only on the count charging planning, preparation, and waging [of aggressive war], and were not indicted on the conspiracy count. If the contention is correct that both counts are one and the same thing, then it would be meaningless to find a defendant guilty on one of the counts, and not guilty on the other count. On its face, therefore, that is sufficient proof that the counts are independent and separate. The judgment of the IMT, as we show in more detail in our brief, very plainly indicates that in its decision as to the individual defendants they recognized and drew a distinction between the conspiracy count and the count charging participation in the planning, preparation, and waging of aggressive war.

A careful analysis of the IMT judgment discloses that in the application of the facts to the respective counts, they applied a different degree and quantum of proof to convict for a conspiracy than they did to convict on the count charging planning, preparation, and waging of aggressive war. One reason for the Court adopting such a narrow construction of the concept of conspiracy was probably the fact that this concept of conspiracy is foreign to continental law, and hence it was given a very limited construction. But, again, we emphasize the point that when the same defendant whom the IMT has acquitted of count one is found guilty under count two, then the conclusion must be inescapable that the counts are separate and distinct offenses in the legal sense.

Conspiracy, therefore, is to be considered separate and apart from the count charging planning, preparation, initiation, and waging of wars of aggression.

The Difference between Waging Wars of Aggression and Participation in the Preparation, Planning, and Initiation

Control Council Law No. 10 [Article II, paragraph 1 (*a*)] defines crimes against peace as:

> "* * * Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or

waging a war of aggression, or a war of violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing."

The London Charter in Article 6, contains the same definition—in the alternative—planning, preparation, or waging. Now, it is plain from the language of Control Council Law No. 10 and the London Charter that the planning, preparation, and initiation are separate distinct offenses from waging, and that a conviction will lie for participating *either* in the planning, preparation, and initiation, or in the waging. That distinction is made by the IMT with respect to the case of the defendant Doenitz, and the Tribunal specifically stated there that Doenitz did not participate in the planning, preparation, or initiation, but did participate in waging, and upon that ground found him guilty under count two, as charged. Since the IMT decision, the General Tribunal in the French Zone of Occupation, consisting of French, Belgian, and Dutch judges, rendered a judgment in the case of *Hermann Roechling.** This Tribunal was exercising jurisdiction under Control Council Law No. 10. In its judgment it also drew the distinction between planning, preparation, and initiation of wars of aggression, and the waging of such wars. In that case, Roechling was charged on specific counts with (1) having participated in the preparation and planning of aggressive war, and (2) participating in the waging of aggressive war. The judgment of the General Tribunal, which we discuss in detail in our brief, acquitted Roechling of the count charging him with participating in the planning and preparation, but found him guilty of the count charging participation in the waging. The Military Tribunal in the I.G. Farben case also made a similar distinction.

This then brings us to the problem of what is embraced in the concept of "waging" aggressive war.

The Concept of "Waging" Aggressive War

As a general principle of criminal responsibility, it is necessary to establish that a defendant substantially participated in a criminal act, and that such participation was accompanied by criminal intent—or to state it another way, the state of mind of the defendant which accompanied his activity, must be such that it can be adduced that he had knowledge or is chargeable with knowledge of the criminal character of his activity.

Since we maintain that waging is an offense separate and distinct from preparation, planning, and initiation, it is incumbent

* The indictment, judgment, and judgment on appeal in the Roechling case is reproduced in appendix B.

upon us to define, at least for purposes of this case, the extent of the concept of waging.

If there is knowledge on the part of a defendant that the initiation of a particular war is illegal—that is, that it is aggressive—and he then participates in a substantial way in waging such war (and we stress the word substantial), then we say, that constitutes the waging of aggressive war. Now, to illustrate our point—a person may have knowledge of the planning and preparation of wars of aggression, but he does not participate in a substantial enough manner in such planning and preparation which would be sufficient to hold him criminally responsible. Yet, when possessed of such knowledge, whether acquired before or after a particular aggression, any substantial participation by him *thereafter,* constitutes waging of aggressive war within the meaning of Control Council Law No. 10.

The Farben Tribunal undertook to discuss the concept of "waging" in relation to the activities of the defendants in that case. That Tribunal posed the problem as follows:[1]

> "Is it an offense under international law, for a citizen of a state that has launched an aggressive attack on another country to support and aid such war efforts of his country, or is liability to be limited to those who are responsible for the formulation and execution of the policies that result in the carrying on of such a war?"

The Farben Tribunal, in trying to prescribe the limits of the class of persons who are embraced within the concept of waging, stated—[2]

> "* * * to depart from the concept that only major war criminals—that is, those persons in the political, military, and industrial fields, for example, who are responsible for the formulation and execution of policies—may be held liable for waging wars of aggression would lead far afield. * * * To say that the government of Germany was guilty of waging aggressive war, but not the men who were in fact the government and whose minds conceived the planning and perfected its execution, would be an absurdity."

The Farben Tribunal then construed the IMT decision as having fixed the standard of participation—[3]

> "* * * high among those who lead their country into the war."

---

[1] United States *vs.* Carl Krauch, et al., Case 6, I.G. Farben case, judgment, volume VIII, this series.

[2] Ibid.

[3] Ibid.

The Farben Tribunal concluded that the *Farben* defendants were—*

> "* * * neither high public officials in the civil government, nor high military officers. Their participation was that of followers, and not leaders."

What seemed to trouble the Tribunal in the Farben case, was the extent of the standard dealing with waging war, so as not to include within its scope the ordinary German. The Tribunal said:*

> "We cannot say that a *private citizen* shall be placed in the position of being compelled to determine in the heat of war, whether his government is right or wrong, or if it starts right—when it turns wrong. We would not require the citizen, at the risk of becoming a criminal under the rules of international justice, to decide that his country has become an aggressor, and that he must lay aside his patriotism, the loyalty to his homeland, and the defense of his own fireside, at the risk of being adjudged guilty of crimes against peace on the one hand, or of becoming a traitor to his country on the other if he makes an erroneous decision based upon facts of which he has but a vague knowledge." [Emphasis supplied.]

In endeavoring to find the mark dividing the guilty from the innocent, insofar as responsibility for waging of aggressive war is concerned, the Farben Tribunal stated that the line of demarcation did not stop with the defendants who were tried before the IMT. The standard of the IMT was construed by the Farben Tribunal* as having been set "below the planners and leaders such as Goering, Hess, von Ribbentrop, Rosenberg, Keitel, Frick, Funk, Doenitz, Raeder, Jodl, Seyss-Inquart, and von Neurath who were found guilty of the waging of aggressive war," and the Farben Tribunal construed this standard as being "above those whose participation was less, and whose activity took the form of neither planning nor guiding their nation in its aggressive ambition."

As we have indicated, the Farben case dealt with private citizens, not high government officials.

The test which we suggest be applied to the defendants in this case, in connection with "waging," eliminates the fears indicated by the Farben Tribunal. The defendants here charged were all high officials of the government possessed with unique knowledge unavailable to private citizens. Hence, the area of responsibility in this case is limited to high officials of the government who had

* Ibid.

knowledge of the planning and preparation for some or all of the aggressions, and whose participation after the initiation thereof was substantial.

Plunder, Spoliation, and Slave Labor—as "Waging War"

In connection with the concept of "waging," we desire to call attention to another factor which is embraced in this concept. The plunder of property in occupied countries is charged separately as a war crime, and a crime against humanity. The initiation and utilization of slave labor is separately charged as a war crime and a crime against humanity. But there are other aspects of plunder and spoliation and slave labor which play a part in crimes against peace relating to the waging of aggressive war.

When a defendant has knowledge that an aggressive war has been initiated, and that the plan for waging of such war includes the utilization of the economy and industry of occupied countries, and the utilization of the manpower of such occupied countries, then his substantial participation in the execution of these features of the program constitutes participation in waging wars of aggression. Now, the distinction between performing activities in this field, which are war crimes and crimes against humanity, and participation in these activities which constitute waging of wars of aggression, lies in the fact of knowledge that these programs are intended as part of the plans for the waging of wars of aggression. To illustrate—plunder and spoliation of property, *per se,* constitutes a war crime and crime against humanity. When, in addition to participating in the act of plunder itself, there is evidence that this participation was accompanied by knowledge that the property was to be plundered and spoliated pursuant to a plan or program to more effectively wage the aggressive wars, then as to such defendant, the crime of "waging" is made out.

Another factual illustration will perhaps make this point clearer. In connection with the spoliation charges against Russia, the defense have taken the position that as a matter of law it is not a violation of the Hague Regulations to plunder Russian property, since such property is of a special character and not of the kind dealt with in the Hague Conventions. The prosecution vigorously contests this contention. But if such contention is sustained then, of course, there would be no war crimes or crimes against humanity of plunder and spoliation as to Russia. Now assuming, for argument's sake only, that with respect to war crimes and crimes against humanity there is no criminal responsibility for the spoliation acts in Russia, it is clear from the evi-

dence that the spoliation activities in Russia were integral parts of the plans for waging aggressive war, both against Russia and the other Allied countries, and any defendant who had knowledge of and substantially contributed to the planned aggression against Russia, and who had knowledge of and substantially contributed to the plans to plunder and spoliate Russian industry for purposes of enabling the German war machine to wage aggressive war, is guilty of the crime of participation in the waging of aggressive war.

There is another aspect of "waging" that we should like to discuss. The evidence as to some defendants shows substantial participation in the planning to use Russian industry and manpower as an instrument for the strengthening of the German military machine for the continued waging of war. Assuming, however, *arguendo,* there was no participation in the Russian spoliation as distinguished from the planning, yet participation in such planning would constitute participation in waging aggressive war against England, France, Holland, Belgium, etc., for the planning to use the resources and manpower of Russia was directly connected with the plans for further waging of war against England and the other countries mentioned.

We have referred to the judgment of the General Tribunal in the French zone in the Roechling case, and have pointed out that the Tribunal, consisting of French, Belgian, and Dutch judges, found the defendant in the case guilty of "waging," but acquitted him of participating in the planning, preparation, and initiation of aggressive war. We have discussed in our brief in some detail the facts upon which the French Tribunal based its decision which found the defendant guilty of "waging," and for present purposes it would be sufficient to note that Roechling's activities for which he was convicted for "waging" are related to the taking-over and utilization of industry and property of occupied countries for the purpose of waging wars of aggression. Now, Roechling's positions and activities were considerably less significant than those of these defendants.

Austria and Czechoslovakia—Crimes Against the Peace

In connection with crimes against peace, consideration of the legal effect of the activities of Germany, and of these defendants, in relation to Austria and Czechoslovakia is necessary. From the legal aspect, we see the problem to be this: Were the invasions of Austria and Czechoslovakia where no hostilities actually occurred, were those invasions crimes against peace? Does the fact that there was no physical resistance by Austria or Czechoslovakia in the form of sending an army into the field to resist

the German invasion make this invasion a permissible one under international law?

The position of the prosecution is that if the invasion is unlawful, it does not become lawful because the military force of the invading power was so superior that the occupied power felt it useless, in the military sense, to resist.

The moral problem and, we respectfully submit, the legal problem here involved relates to the use of force as an instrument of national policy. It is the exercise of such force on another government, compelling the latter government to yield to the superior force, which constitutes the crime. We cannot see, as a matter of principle, that it can make any difference whether the government yields after a battle or before a battle, when from the military point of view, it is known that actual resistance can serve no useful purpose.

The IMT considered that point, and stated:[1]

> "It was contended before the Tribunal that the annexation of Austria was justified by the strong desire expressed in many quarters for the union of Austria and Germany; * * * and that in the result the objective was achieved without bloodshed.
>
> "These matters, even if true, are really immaterial, for the facts plainly prove that the methods employed to achieve the objective were those of an aggressor. The ultimate factor was the armed might of Germany ready to be used if any resistance was encountered."

The IMT, in discussing the guilt of von Schirach, stated:[2]

> "Von Schirach is * * * charged * * * only with the commission of crimes against humanity. As has already been seen, Austria was occupied pursuant to a common plan of aggression. Its occupation is, therefore, a 'crime within the jurisdiction of the Tribunal,' as that term is used in Article 6(*c*) of the Charter."

The Tribunal then held that persecution on political, racial, or religious grounds in connection with the occupation of Austria constituted a crime against humanity under the Charter. This holding is significant when we recall that the Tribunal held:[3]

> "To constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. * * * The Tribunal, therefore, cannot make a *general declaration* that the acts before 1939 were crimes against humanity within the meaning of the Charter * * *." [Emphasis supplied.]

[1] Trial of the Major War Criminals, volume I, page 194 Nuremberg, 1947.
[2] Ibid., pp. 318–319.
[3] Ibid, p. 254.

We emphasize the words "general declaration." These holdings of the IMT plainly indicate that it is not a requisite for actual hostilities to take place in order to support a finding that an aggressive act or an invasion in violation of international treaties has occurred. If the IMT had thought that the occupation of Austria was lawful, then it would have been bound to hold that crimes against humanity could not, in the legal sense, have been committed in Austria. Its holding was directly to the contrary.

It should be pointed out, in this connection, that the indictment lodged before the IMT did not charge the invasion of Austria as an aggressive war. The IMT made special reference to that point when it discussed the guilt of Kaltenbrunner, and stated:[1]

> "The Anschluss, although it was an aggressive act, is not charged as an aggressive war * * *"

In this indictment, we have specifically charged that the invasion against Austria was an invasion and act of aggression in violation of international laws and treaties. We have then in this case a charge which was not made against any of the defendants before the IMT. The finding of the IMT that the invasion of Austria was an aggressive act is binding on this Tribunal. In view of the specific charge in the indictment that this particular activity is an invasion and a war of aggression in violation of international treaties, a specific finding is required as to each of the defendants who are here charged with responsibility for participation in the planning and preparation for the invasion of Austria.

Czechoslovakia presents a slightly different problem. There are two factual phases dealing with the situation in Czechoslovakia—(1) the Sudetenland, which was occupied under the Munich Agreement; and (2) Bohemia and Moravia, which were occupied on 15 March 1939 in violation of the Munich Agreement, and in violation of international law generally.

As to the occupation of Bohemia and Moravia, the findings of the IMT are that—[2]

> "Bohemia and Moravia were occupied by military force. Hacha's consent, obtained as it was by duress, cannot be considered as justifying the occupation."

JUDGE MAGUIRE: Right there, Mr. Amchan.

MR. AMCHAN: Yes?

JUDGE MAGUIRE: I was under the impression that somewhere in the record it was indicated that there was sporadic or temporary

[1] Ibid., p. 291.
[2] Ibid., p. 334.

armed resistance to the march into Bohemia and Moravia. Am I in error on that?

MR. AMCHAN: I will have to check it, if Your Honor please. I do not recall just now whether it is in the record or not. I am not familiar with the details.

MR. CAMING: May I consult with my associate?

JUDGE MAGUIRE: Yes.

MR. AMCHAN: Your Honor is entirely correct; there is evidence in the record, as I am informed, that there was resistance.

JUDGE MAGUIRE: Just temporary, though?

MR. AMCHAN: Temporary. There is further evidence that the German forces actually entered Bohemia and Moravia before 15 March 1939. I am informed that is in this record.

If I may, with Your Honor's permission, continue?

PRESIDING JUDGE CHRISTIANSON: You may proceed.

MR. AMCHAN: The findings of the IMT with respect to Bohemia and Moravia. The IMT stated:[1]

> "Bohemia and Moravia were occupied by military force. Hacha's consent, obtained as it was by duress, cannot be considered as justifying the occupation * * *. The occupation of Bohemia and Moravia therefore must be considered as a military occupation covered by the rules of warfare."

Again, if Your Honors please, this indicates that if the invasion is aggressive or in violation of international treaties or assurances, it is a crime against peace within the meaning of Control Council Law No. 10, regardless of whether hostilities actually occurred. A contrary holding would substitute force as the standard of justice, rather than the sanctity of international obligations, and a small or a weak nation which lacks the military force to resist the powerful aggressor would have no protection under international law. International law, we respectfully submit, cannot rest on any such immoral foundation.

As to the Sudetenland, the argument is made that the occupation of that part of Czechoslovakia was lawful, since it was pursuant to the Munich Pact. The IMT, after reciting the facts in connection with the planning of aggression against Czechoslovakia, stated:[2]

> "These facts demonstrate that the occupation of Czechoslovakia had been planned in detail long before the Munich conference. * * * The plan was modified in some respects in September after the Munich conference, but the fact that the plan existed in such exact detail and was couched in such warlike language, indicated a calculated design to resort to force."

[1] Ibid., p. 334.

[2] Ibid., p. 196.

The Munich Agreement insofar as Germany was concerned was a "diplomatic" operation, carried out in execution of the plan to take all of Czechoslovakia by force. We do not, we submit, have to consider any theoretical question under international law as to whether occupation of a country under a formal license of another power, or with the formal consent of another power, is legal under international law. We need go no further than a consideration of the facts of the Munich Agreement. In view of the findings of the IMT that it was concluded as an alternative to the immediate execution of the aggressive plans of Germany to occupy Czechoslovakia, it does not carry with it the same legal effect as an agreement carries which is freely negotiated, without force or coercion. In our brief dealing with the legal principles applicable to plunder and spoliation and war crimes and crimes against humanity, we discuss the legal problems of Czechoslovakia in some detail, and for a further consideration of the question, we respectfully refer the Tribunal to that brief.

JUDGE MAGUIRE: Just there, Mr. Amchan. Is it the contention of the prosecution that even though plans and preparations for the waging of an aggressive war had been made and they did not result in any hostilities or any invasion, that therefore there was no overt act in carrying out of any aggressive war and that a crime would be committed?

MR. AMCHAN: No, if Your Honor please, our point is that there was an overt act and that these plans and preparations resulted in an overt act.

JUDGE MAGUIRE: What is the overt act?

MR. AMCHAN: The overt act is sending the military force across the border of a neighboring country.

JUDGE MAGUIRE: You mean because of the Munich Agreement? I am talking about the Munich Agreement.

MR. AMCHAN: Are you limiting it to the Munich Agreement?

JUDGE MAGUIRE: Yes.

MR. AMCHAN: The overt act is exerting pressure as a means by which Germany was able to occupy Czechoslovakia. The agreement, we say, is of no effect because it was obtained through force, and therefore the taking of Czechoslovakia was under the threat of force. That is the position of the prosecution.

JUDGE MAGUIRE: Well, is there anything in the London Charter or in any decision of any of the Tribunals that would warrant any such conclusion?

MR. AMCHAN: We think there is, because otherwise we do not understand the meaning of the findings of the IMT that the taking over of Czechslovakia and the Sudetenland was pursuant to a plan of aggression. Now, if the findings of the IMT mean any-

thing in that respect, they mean that the Munich Pact was part of the general plan to take over Czechoslovakia by force. And our point is that the taking over of the Sudetenland while it had the formal protection of an agreement is, when you look through the agreement, nothing more than another means of the exertion of force to occupy Czechoslovakia. That is our understanding, as we interpret the IMT holding.

Now, we did indicate to Your Honors that you do not have before you any general theoretical question as to whether, under international law, an occupation is lawful if pursuant to an agreement between powers. We think the question is limited only to the special facts of this case; the special facts of the Munich Agreement. We see no reason why an agreement—an international agreement—if found by an international tribunal to have been secured under force and duress, cannot be given the same effect as domestic courts give to other private agreements which are similarly secured.

We have mentioned the findings of the IMT to the effect that the invasion of Austria and Czechoslovakia were aggressive acts, and the findings that certain wars were aggressive wars. We believe this an appropriate time to consider the effect of those findings. Ordinance No. 7 [Article X] provides that—

> "The determinations of the International Military Tribunal * * * that invasions, aggressive acts, aggressive wars, crimes, atrocities or inhumane acts were planned or occurred, shall be binding on the tribunals established hereunder and shall not be questioned except insofar as the participation therein or knowledge thereof by any particular person may be concerned. Statements of the International Military Tribunal in the judgment in Case No. 1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary."

A number of the defendants have attempted to show that some of the acts found aggressive by the IMT were not aggressive in fact. Of course, under Ordinance No. 7 this avenue is not open to them. The ordinance provides that "determinations of the IMT that invasions and aggressive acts, aggressive wars" took place are binding. But the defendants may argue that they had no knowledge that the invasion, for example of the U.S.S.R., was aggressive, and that on the contrary they thought Germany's attack was in fact a defensive war. This is a fashionable line of argument nowadays, but it is not new. The same argument was made before the IMT. Concerning that argument and the evidence there submitted, the IMT said:*

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* Trial of the Major War Criminals, op. cit. supra, volume I, page 215.

"It was contended for the defendants that the attack upon the U.S.S.R., was justified because the Soviet Union was contemplating an attack upon Germany, and making preparations to that end. It is impossible to believe that this view was ever honestly entertained."

The evidence submitted in this case is to a similar effect and has not stood up under cross-examination. The testimony of General Halder, Chief of Staff [of the German Army], called as a defense witness on this point, is a striking example of the shallowness of this proof. We submit that, quite as in the IMT case "it is impossible to believe that this view was ever honestly entertained" by any of these defendants.

Distinguishing the Krupp, Farben, and High Command Cases

We come now to a consideration of the cases which have, heretofore, been decided by the Military Tribunals at Nuernberg, which deal with the legal questions involving the interpretation and application of the Control Council Law No. 10 definition of crimes against peace.

In the case by case application of the principles announced by the IMT, and those underlying Control Council Law No. 10 relating to crimes against peace, the Military Tribunals at Nuernberg have excluded certain types of officials and persons and certain activities from the area of responsibility for this crime. Thus, in the Krupp case, the Tribunal held that private citizens who were engaged in producing munitions for war could not be charged with responsibility for participating in the planning, preparation, initiation, or waging of aggressive war when there was no showing that such private persons had any substantial connection with or close relationship to the officials of the government who were engaged in such planning, preparation, initiation, or waging. Thus, Judge Anderson, in his special concurring opinion in that case, stated:*

"The twelve defendants were noncombatants engaged as private citizens in the conduct of a private enterprise producing, among other things, armaments for profit. * * * if the manufacture and sale of armaments for profit can be regarded as preparation for war in a criminal sense, it can only be so if done in complicity with the plans of some agency capable of planning, initiating, and waging war."

Likewise in the case involving the defendants of I.G. Farben, the Tribunal held that they too were private citizens who were not shown to have the degree of connection with high government

* United States *vs.* Alfred Krupp, et al., Case 10, volume IX, section VI H, this series.

officials of a character to warrant a finding that their participation in rearmament was with the knowledge of its criminal purpose. Thus, the Tribunal in the Farben case stated:*

> "In this case, we are faced with the problem determining the guilt or the innocence with respect to the waging of aggressive war on the part of men of industry who were not makers of policy, but who supported their government during the period of rearmament, and who continued to serve that government in the waging of war. * * * The defendants now before us are not high government officials in the civil government, nor high military officers. Their participation was that of followers, and not leaders."

We think it apparent that in the factual situations involving Krupp and Farben, the decisive fact was that the defendants were private citizens not occupying high government or military office. This fact is the substantial difference between those cases and the case at bar.

JUDGE MAGUIRE: Well, right there, Mr. Amchan, wouldn't the high official likewise have to have knowledge of the existence of the plans to initiate and wage an aggressive war just the same as the private individual?

MR. AMCHAN: That is right. The only point is the position indicates that a government official has other sources of knowledge from a private individual.

JUDGE MAGUIRE: But he still must have the knowledge.

MR. AMCHAN: Yes, we do not deny it. We claim there must be knowledge.

JUDGE POWERS: How do you define a high official?

MR. AMCHAN: It's difficult to define. I think it's a factual question dependent upon the functions he performs in the government. You have to take it on a factual basis—the functions he performs in the government and how important and how substantial the contributions are to any preparation.

JUDGE POWER: Would you call an officer whose duties are to carry out the orders of somebody else a high officer?

MR. AMCHAN: Military officers, in view of the High Command case, have a special rule peculiar and unique to military organizations.

JUDGE POWERS: I'm not talking about military officers. Any officer.

MR. AMCHAN: Our position is that a civilian or an official who is a civilian in a high office and not under compulsion or orders to participation in planning a preparation to wage aggressive war—

JUDGE POWERS: That applies to all officials then?

* United States *vs.* Carl Krauch, et al., Case 6, judgment, volume VIII, this series.

MR. AMCHAN: An official who occupies such a position. I can't make a general definition, if Your Honor please. It's a factual question.

JUDGE POWERS: Well, what fact does it depend upon?

MR. AMCHAN: The position occupied by a particular government official, as in this case where they appear to be at cabinet level, ministerial level, or similar levels. Government officials so situated occupied, as this record shows, in the Third Reich, a position of responsibility and the record shows that their activities were of such a nature that the preparation and planning could not have been carried out without them. Their position is one of responsibility. Their activities were substantially in connection with the charges made.

PRESIDING JUDGE CHRISTIANSON: Well, you are claiming, of course, the defendants in the dock fall in the category of high officials.

MR. AMCHAN: That is right.

PRESIDING JUDGE CHRISTIANSON: That is your claim?

MR. AMCHAN: That is right. And we maintain further that high official, as contemplated by Control Council Law No. 10, whether one is the type of official coming within the meaning of Control Council Law, is a factual question in each case dependent upon the nature of his position and the nature of his duties.

PRESIDING JUDGE CHRISTIANSON: Go ahead.

MR. AMCHAN: The Military Tribunal in the case known as the High Command case,* decided 28 October 1948, again applied the IMT principles and the statutory definition of crimes against peace to the particular facts of that case, which involved commanders and staff officers, "below the policy level," and the Tribunal was of the opinion that such officers "in planning campaigns, preparing means for carrying them out, moving against a country on orders, and fighting a war after it has been instituted," were not participating in the planning, preparation, initiation, or waging of war. The decision of the Military Tribunal in the High Command case was nothing more than the application of legal principles to a given factual situation, namely, the authority and activities of a particular group of military commanders and officers. This is apparent from the following reference in the Tribunal's judgment:

> "* * * the individual soldier or officer below the policy level is but the policy makers' instrument, finding himself as he does under the rigid discipline which is necessary for and peculiar to military organization."

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* United States *vs.* Wilhelm von Leeb, et al., Case 12, Judgment, volume XI, this series.

In the cases discussed, there will necessarily appear dicta both pro and con. This is familiar judicial technique in rationalizing a particular judgment. The point we make is that the three cases referred to, namely Krupp, Farben, and the High Command, constitute factual situations of a special nature, and as to those factual situations, the Tribunals found that the persons and activities there involved did not come within the scope of criminal responsibility for crimes against peace.

The law still is left at the stage where it must be developed by a case-to-case process of inclusion and exclusion before it can be sufficiently crystallized into a more definite pattern which identifies with greater certainty the positions and activities coming within its prohibition.

The point we make is that the three factual situations which these three Military Tribunals at Nuernberg had before them for consideration with respect to crimes against peace are substantially different from the factual situations which are present in this case. The defendants here, however, both by virtue of their high government position and their functional activities, are parallel to the defendants found guilty by the IMT.

What then, shall we use as a guide in applying to the facts in this case the principle that aggressive war is criminal?

The IMT has stated that the supreme international crime is the commission of crimes against peace. The Krupp case recognized this basic moral concept underlying this crime, and stated:[1]

> "* * * Aggressive war is the supreme crime, and no penalty is too severe for those who are responsible for it."

We further have the observation of the IMT, that—[2]

> "Hitler could not make aggressive war by himself. He had to have the cooperation of statesmen, military leaders, diplomats and businessmen."

What we are faced with here is the recognition in international law of a moral principle, coupled with repeated assurances that the maintenance of this moral principle is necessary for the preservation of civilization. If in application this principle is too narrowly applied, it becomes a pious hope, and not an instrument of justice for which the responsible persons must answer.

It is not true that the only persons responsible for the aggressive wars of Germany are Hitler and the thirteen defendants who were found guilty by the IMT. It runs contrary to experience and to all reason to say that the tremendous military organization which Germany built to prepare for aggressive war and to wage it is the handiwork of only Hitler and those thirteen persons. It

[1] United States *vs.* Alfred Krupp, et al., Case 10, section VI H, volume IX, this series.
[2] Trial of the Major War Criminals, op. cit. supra, volume I, page 226.

is unrealistic, and contrary to everyday experience, to say that thirteen persons can mobilize a population of 80 million, and organize an industrial economy for war over a period of years, and integrate the economy of conquered countries to wage aggressive war. Mr. Justice Jackson expressed the same thought in his presentation before the IMT:*

> "This war did not just happen—it was planned and prepared for over a long period of time and with no small skill and cunning. The world has perhaps never seen such a concentration and stimulation of the energies of any people as that which enabled Germany 20 years after it was defeated, disarmed, and dismembered, to come so near carrying out its plan to dominate Europe. Whatever else we may say of those who were the authors of this war, they did achieve a stupendous work in organization, and our first task is to examine the means by which these defendants and their fellow conspirators prepared and incited Germany to go to war."

Common knowledge of modern government should be enough to demonstrate that von Ribbentrop was not the whole Foreign Office. Goering was not the entire Four Year Plan. Goebbels was not the entire propaganda machine. Himmler was not the entire SS. And Hitler was not the whole government in action. The defendants in this case are the high governmental officials who were partners of and indispensable supplements to von Ribbentrop, Goering, Goebbels, Himmler, and Hitler, so that the tremendous military machine which they were building in preparation for the aggressive wars, and the waging of such wars, could be accomplished.

If, as former Secretary of War, Henry L. Stimson, states: "the central moral problem is war—and not its methods" we do not come to grips with the heart of the problem by giving the words of Control Council Law No. 10 a restrictive interpretation that is not justified by the language nor by the spirit and intent of the law. Such restrictive interpretation disregards the factual situation which the legislators had in mind at the time.

We call attention again to paragraph 2 of Article II of Control Council Law No. 10, which provides that a person is deemed to have committed a crime against peace if—

> "* * * he was (*a*) a principal or (*b*) was an accessory to the commission of any such crime or ordered or abetted the same or (*c*) took a consenting part therein or (*d*) was connected with plans or enterprises involving its commission or (*e*) was a member of any organization or group connected with the

* Trial of the Major War Criminals, op. cit. supra, volume II, page 104.

commission of any such crime or (*f*) with reference to paragraph 1 (*a*), if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, co-belligerents or satellites or held high position in the financial, industrial or economic life of any such country."

Now, we respectfully suggest that this Tribunal, being a creature of, and owing its existence to, the authority of the Control Council Law, is required to give to that statute an interpretation consistent with its legislative intent. That is to say, the standards laid down in paragraph 2 of Article II are statutory provisions, and the Tribunal is bound to apply the provisions of that statute, according to its plain language. A tribunal cannot, under the guise of interpretation of a particular statute, set up its own standards of criminal responsibility. The provisions state that a person holding high position in the civil, military, or industrial life in Germany, if he takes a consenting part, is guilty of the commission of crimes against peace.

It appears to us that this statutory standard has not always been applied in accordance with its unmistakable language.

There is a tendency to judge these defendants according to the standards of public life in the executive branch of the governments of the United States, England, and other democratic countries. The system of government instituted by the Third Reich was based on political and legal considerations of a different nature. The division of legislative, judicial, and executive power, which we know, was done away with and lodged in one department of the government and rationalized under the concept of the Fuehrer principle. All of these defendants willingly joined that political system and that government, knowing that a different principle of responsibility for government action was the standard of their system. They voluntarily joined the government of Hitler, and exercised the legislative, executive, and judicial power so concentrated in the government offices in which they became associated. Did they not then, in plain and simple language, sanction, approve, and participate in the force and terror upon which that system was based and maintained?

Can they now say that they, Cabinet members, ministerial secretaries, or government officials on the same level are not to be held responsible because the final over-all decision was at the Fuehrer level?

Koerner's defense is a good example of this point. He joined up with Goering early in 1926 and when Goering was first elected to the Reichstag in 1928, Koerner severed his private business connections to devote his full time to Goering. From the beginning of the Nazi seizure of power, he became his closest associate.

He was to Goering what Hess was to Hitler. He was at Goering's side through the successive stages of terror whereby the power was seized, was extended, and was maintained. He was his chief deputy in the Four Year Plan. He says now that although he was at a high governmental level, he cannot be held responsible for the general policy of the government which led to war, notwithstanding his participation in the execution of that policy. For he argues that under the Fuehrer principle (and he asks for a literal interpretation and application of that principle) only Goering can be held responsible for the tremendous job of the Four Year Plan which did enable Germany to wage the aggressive wars. Only Goering, he says, could make the basic decision, and hence only he should be held answerable.

It is not, we submit, a realistic approach to the factual situation relating to the government of the Third Reich to undertake to define the precise areas of authority between Goering and Koerner. Nor is it a realistic approach to undertake to define the precise area of authority between von Ribbentrop and von Weizsaecker; between Goebbels and Dietrich; between Frick and Stuckart; between Himmler and Berger or Schellenberg. The internal jurisdictional divisions which the Hitler government set up to more effectively carry out the planning, preparation, and waging of aggressive war cannot, in a realistic sense, be broken down so as to apportion closely within these sectors and levels, the varying degrees of responsibility. We think it enough if the evidence shows that each defendant knowingly took a consenting part in, and participated in, a substantial way in the criminal activities charged. It is enough that each of these defendants operated at a high level in the same fields of activity that the principal defendants in the IMT case operated and substantially contributed to the success or failure of the program.

A functional comparison with the positions and activities of the defendants in the IMT and the defendants in this case will disclose the parallel between the two cases. The simple test to be applied to these defendants is this: Was there substantial participation by those defendants in the preparation, planning, initiation, or waging of aggressive war, and was such participation done with knowledge of the fact that the policy in which they were engaged had as its basis the use of force as an instrument of national policy?

An analogy of these defendants, in connection with crimes against peace, to the defendants convicted by the IMT will now follow. Mr. Caming will continue for the prosecution.

PRESIDING JUDGE CHRISTIANSON: It appears to the tribunal that this is a good point at which to take a recess, there being a natural

division in the argument. The Tribunal will now recess for 15 minutes.

[Recess]

Von Weizsaecker, Woermann, Ritter, and Veesenmayer

THE MARSHAL: Military Tribunal IV is again in session.

PRESIDING JUDGE CHRISTIANSON: At the request of counsel for Keppler, the defendant Keppler has been excused from attending for the rest of the day.

Mr. Caming, if you are ready to proceed with the argument you may do so.

MR. CAMING: Yes, Your Honor.

The culpability of the defendants von Weizsaecker, Woermann, Ritter, and Veesenmayer for crimes against the peace is a part of, or essential supplement to, the culpable conduct of certain defendants convicted on the aggressive war count before the IMT. We shall draw some parallels between parts of the evidence in this case and the findings of the IMT concerning the criminal conduct of von Ribbentrop, von Neurath, Seyss-Inquart, and Frick, all defendants convicted by the IMT.

First let us take the activities of the defendants von Weizsaecker and Woermann. We find these activities are comparable to or extensions of the conduct of von Ribbentrop and von Neurath. Ribbentrop and von Neurath were found guilty under both the conspiracy and aggressive war counts by the IMT. At the time of the aggressive act against Austria in March 1938, Neurath once again took charge of the Foreign Office for the duration of the action against Austria, even though von Ribbentrop had been appointed von Neurath's successor. During this interregnum von Weizsaecker remained chief of the Political Division. The IMT held that von Neurath—*

> "* * * took charge of the Foreign Office at the time of the occupation of Austria, assured the British Ambassador that this had not been caused by a German ultimatum, and informed the Czechoslovakian Minister that Germany intended to abide by its arbitration convention with Czechoslovakia."

Von Weizsaecker shares responsibility for the formulation of the assurance which von Neurath gave to the Czechs and in the preparation of the official communique containing the Nazi pretext "justifying" the Anschluss. This communique was made before the German troops went into action against Austria.

Within a few days after the success of Germany's first aggressive act, von Weizsaecker was promoted from chief of the Political

* Trial of the Major War Criminals, op. cit. supra, volume I, page 334.

Division to the position of State Secretary of von Ribbentrop, the new Foreign Minister. Von Ribbentrop needed and used the capacity and suavity of the experienced von Weizsaecker and of the defendant Woermann, the experienced Under State Secretary, who succeeded von Weizsaecker as chief of the Political Division. Von Weizsaecker and Woermann were head over heels in the machinations connected with Germany's next aggressive act against Czechoslovakia and, indeed, in the maneuvers of aggression from there on until the last aggression had been launched.

The IMT's findings as to von Ribbentrop's participation in the aggressive plans against Czechoslovakia can be applied to the defendant von Weizsaecker almost word for word with very little alteration. The IMT held that von Ribbentrop "participated in the aggressive plans against Czechoslovakia." So did von Weizsaecker. The IMT held that von Ribbentrop "participated in a conference for the purpose of obtaining Hungarian support in the event of a war with Czechoslovakia." So did the defendant von Weizsaecker. The IMT found that after the Munich Pact the defendant von Ribbentrop "continued to bring diplomatic pressure with the object of occupying the remainder of Czechoslovakia." So did the defendant von Weizsaecker. The IMT found that von Ribbentrop was instrumental "in inducing the Slovaks to proclaim their independence." So was the defendant von Weizsaecker. Both von Ribbentrop and the defendant von Weizsaecker were "present at the conference of 14–15 March 1939, in which Hitler by threats of invasion counseled Hacha to consent to the German occupation of Czechoslovakia." When, finally, the defendant von Ribbentrop was in Prague for the "celebration," the defendant von Weizsaecker remained in Berlin in charge of the Foreign Office. There he informed foreign diplomats that the Czechoslovakian affair was a *fait accompli* and that Germany would not accept any protest.

We submit that there is a striking interrelation, and often almost identity, between the conduct and guilt of von Ribbentrop and the defendant von Weizsaecker in the aggression against Czechoslovakia. It is no more striking, however, than the interrelation of their activities in the aggression against Poland. The IMT held that von Ribbentrop "played a particularly significant role in the diplomatic activities which led up to the attack on Poland." So did von Weizsaecker. The IMT found the defendant von Ribbentrop discussed "the German demands with respect to Danzig and the Polish Corridor with the British Ambassador during the period of 25 to 30 August 1939." Von Weizsaecker discussed the same question with Ambassador Henderson and Ambassador Coulondre for a still longer period of time. The IMT

found that it was an official German policy to "attempt to induce the British to abandon their guaranty to the Poles." Concerning the discussions on these questions, both von Ribbentrop and von Weizsaecker "did not enter them in good faith in an attempt to reach settlement of the difficulties between Germany and Poland." Von Weizsaecker cabled the defendant Veesenmayer that discussions with the Poles should be continued in such a way so that the failure of a pacific settlement could be blamed upon the Poles. It is a little late in the day for Weizsaecker to declare that he did not identify his will with the aggression of Hitler's Third Reich.

The correlative nature of the conduct of von Ribbentrop and von Weizsaecker continued with respect to the aggressive acts against Norway, Denmark, and the Low Countries. The IMT held that "Ribbentrop was advised in advance of the attack" and that von Ribbentrop "prepared the official Foreign Office memoranda attempting to justify these aggressive actions." Von Weizsaecker, for his part participated in numerous conferences to induce the Norwegian, Danish, and Belgian Governments to capitulate without resistance. The documents show that the teamwork of von Ribbentrop and von Weizsaecker continued with respect to the aggressive acts against the Balkan countries and the Soviet Union.

The defendant Woermann participated substantially in all aggressive acts beginning with Czechoslovakia. He was chief of the Political Division, the very heart of the German Foreign Office. In this position he necessarily gave intimate and significant support to the acts of von Ribbentrop and von Weizsaecker. It is striking to compare his function in the Foreign Office with the IMT findings concerning the defendant Frick's work in crimes against peace. With respect to Frick the IMT stated:*

> "Performing his allotted duties, Frick devised an administrative organization in accordance with wartime standards. According to his own statement, this was actually put into operation after Germany decided to adopt a policy of war."

According to an official German document spelling out the organization of the German Foreign Office, Woermann's Political Division held (*NG–3341, Pros. Ex. 3658*)—

> "* * * the position of a central agency, which is to observe current events abroad and to determine foreign policy according to the Fuehrer's intentions."

We have already noted that the IMT found that von Ribbentrop was "instrumental in inducing the Slovaks to proclaim their inde-

* Trial of the Major War Criminals, op. cit. supra, volume I, page 299.

pendence." Woermann, in an official memorandum, expounded the rationale of securing an independent Czechoslovakia pursuant to Germany's plans for expansion to the East. Woermann wrote (*NG–3056, Pros. Ex. 98*) :

> "An independent Slovakia would be a weak political organism and hence would lend the best assistance to the German need for advance and settling space in the East. Point of least resistance in the East."

The IMT found that von Ribbentrop used the Sudeten question as a means—*

> "* * * which might serve as an excuse for the attack which Germany was planning against Czechoslovakia."

We ask the Tribunal to note carefully what Woermann was thinking and counseling concerning the Sudeten maneuvering and how carefully he advised with respect to the skillful timing of events. Woermann developed the following plan in his memorandum of 19 September 1938 (*NG–5639, C-Pros. Ex. 385*) :

> "As to the fate of the rest of Czechoslovakia, of the many possibilities ranging from simple annexation to full national independence with or without an international guarantee, the most far reaching possibility, namely that of an annexation, is out of the question for the time being, since otherwise there would be no sense in discussing the terms of the right to autonomy of the Sudeten Germans * * *. The request for German military sovereignty" (as suggested by the Sudeten German Party in a plan submitted to Hitler) "would naturally include the request that Czechoslovakia withdraw from any treaties directed against Germany. Even if such a far reaching program is not desired, or cannot be realized at the present moment, the request for the annulment of such treaties should be made an independent request.
>
> "Under no circumstances must the solution of the Sudeten German question be delayed by negotiations and discussions on the aforementioned problems. For these reasons we will have to see to it that in future discussions with the British the Sudeten German problems on the one hand and the other problems on the other hand be treated differently with regard to the time. The Hungarians and Poles must be won for this idea."

The defendant Ritter, in the German Foreign Office, was Ambassador for Special Assignments. His principal function was to coordinate the aggressive policy between the Foreign Office and the High Command of the Wehrmacht. It is not surprising that

* Ibid., p. 286.

his conduct ties in closely to criminal conduct found by the IMT in its discussions of the defendant von Ribbentrop on the one hand, and the conduct of Keitel and Jodl of the High Command on the other hand. By way of example we shall quote one excerpt from the IMT judgment concerning Keitel and one from the IMT judgment concerning von Ribbentrop. We shall then quote from a memorandum of the defendant Ritter which shows his coordinating role in the diplomatic and the military maneuvers involved in aggression. In the case of Keitel, the IMT held—[1]

> "Formal planning for attacking Greece and Yugoslavia had begun in November 1940. On 18 March 1941 Keitel heard Hitler tell Raeder complete occupation of Greece was a prerequisite to settlement, and also heard Hitler decree on 27 March that the destruction of Yugoslavia should take place with 'unmerciful harshness'."

In the case of von Ribbentrop, the IMT judgment states:[2]

> "Von Ribbentrop attended the conference on 20 January 1941, at which Hitler and Mussolini discussed the proposed attack on Greece, and the conference in January 1941 at which Hitler obtained from Antonescu permission for German troops to go through Rumania for this attack."

In January 1941 Keitel informed Ritter of the aggressive war steps to be taken in the Balkans. Keitel told Ritter that the date for the attack against Greece was set for the beginning of April and that the German troops should enter Bulgaria at the latest possible moment. Based on this conversation, Ambassador Ritter proposed the policy which von Ribbentrop and the Foreign Office should now follow in order to coordinate military and diplomatic acts in the scheduled aggressions. Ritter's own proposal for the policy synchronization reads (*NG–3097, Pros. Ex. 300*):

> "During the next 2 or 3 weeks, a number of actions in the field of foreign policy have to be timed and coordinated with the military situation and the military activities."

In the same memorandum Ritter mapped out actions, which included the renovation of the Bulgarian-Turkish nonaggression pact, the entry of Bulgarian into the Tripartite Pact, and an open statement of German policy concerning Turkey.

When we come to the defendant Veesenmayer, his conduct has striking comparisons to some of the conduct which the IMT emphasized in finding Seyss-Inquart guilty of crimes against peace. Both were masters of Nazi intrigue in the territory of Germany's neighbors. With respect to the intrigue in Austria,

[1] Ibid., p. 289.
[2] Ibid., p. 286.

Seyss-Inquart was the Austrian traitor and as such he has held the limelight concerning the whole affair. However, the contemporaneous documents in this case show that actually Seyss-Inquart was directly subordinate to the defendants Keppler and Veesenmayer in the whole Austrian question. As Hitler's personal representatives in Austria in 1937 and early 1938, the defendants Keppler and Veesenmayer used Seyss-Inquart as the principal tool for turning and preparing the forcible Anschluss. Concerning Seyss-Inquart's role, the IMT stated:*

> "Seyss-Inquart participated in the last stages of the Nazi intrigue which preceded the German occupation of Austria * * *."

In connection with the intrigue which led to the separation of Slovakia from the sovereign Czechoslovak state, both the defendants Veesenmayer and Keppler were topmost representatives of the German Foreign Office in engineering this important aspect of the entire aggression against Czechoslovakia. Both Veesenmayer and Keppler played a substantial role in inducing Tiso to go to Berlin. Keppler accompanied Tiso to Berlin when Hitler, in the presence of the defendant Keppler, forced the hand of Tiso. When this aggression was completed, it was Veesenmayer alone who went to Danzig in order to foment a proper basis for engineering the next German aggression against Poland. It was also Veesenmayer who provided a principal justification for the aggression against Yugoslavia by precipitating the secession of Croatia at the eleventh hour. Veesenmayer moved from one spot to another as the maneuvers of aggression required. Our brief will demonstrate in full the significant role that Veesenmayer played in making and breaking governments and in providing requisites for a number of German aggressions.

Otto Meissner

We now come to the defendant Otto Meissner. Meissner participated in a number of outstanding international meetings which were part and parcel of Germany's political aggression. Meissner was present at the meeting with the Slovak President Tiso which prepared the separation of Slovakia from the sovereign Czechoslovak state. He was present at the conferences with President Hacha when Hacha was bullied into surrendering Czechoslovakia without resistance upon threat of devastation. Meissner was present at the conferences with Japanese Foreign Minister Matsuoka in which Japan was urged (*1881–PS, Pros. Ex. 385*)—

* Ibid., p. 328.

"* * * to strike at the right moment and take the risk upon herself of a fight against America."

But upon a reconsideration of all the evidence in the case, we are not convinced that the evidence proves beyond a reasonable doubt that the defendant Meissner took substantial initiative or played an important role in bringing about these conferences, in influencing what was said or done, or in following up on any decisions taken. After Hitler became both Fuehrer and Reich Chancellor of Germany, it appears that in the consolidation of executive functions under Hitler, the functions of the Chief of the Presidential Chancellery were narrowed. In the field of foreign policy, the Office of the Presidential Chancellery did perform certain functions of protocol and no doubt it was not entirely sterile in influencing or executing the foreign policy of the Third Reich. But on the basis of the entire record we are not convinced that we have established our burden of showing a substantial participation by Meissner in the preparation, initiation, or waging of aggressive war. It does appear that the office of the Presidential Chancellery played a highly significant part in certain policy matters, especially in respect to the treatment of certain prisoners turned over for "special treatment" or murder to the Gestapo.

JUDGE POWERS: Do we understand that you are abandoning the case against Meissner on counts one and two?

MR. CAMING: I am coming to that, Your Honor.

Such conduct, however, is properly a matter for consideration under count five. Therefore, upon consideration of all the evidence in the case, the prosecution feels that it has not established its burden of proof as against the defendant Meissner with respect to crimes against peace. The prosecution hereby formally withdraws its charges against the defendant Otto Meissner under counts one and two of the indictment.

PRESIDING JUDGE CHRISTIANSON: It will be noted that the charges in the indictment in counts one and two as to Meissner are dismissed.

MR. CAMING: And Mr. Hardy will continue for the prosecution, Your Honor.

PRESIDING JUDGE CHRISTIANSON: Mr. Hardy.

MR. HARDY: May it please the Tribunal.

Schwerin von Krosigk

There is an adequate basis for convicting Schwerin von Krosigk on count one by analogizing his case to the cases of Funk and Schacht, defendants in the IMT case. In fact, his guilt is more clearly established than that of Funk in some respects because of the long period of time during which he gave his services to the

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Nazi regime. He encompasses much of the early period during which the IMT found Schacht played a dominant role, as well as the later period when Schacht retired and Funk was Plenipotentiary General for War Economy.

To elaborate this a little more—as to Schacht—the IMT summed up the issue in the following sentence:[1]

> "The case against Schacht therefore depends on the inference that Schacht did in fact know of the Nazi aggressive plans."

That inference, the IMT said,[2]

> " * * * had not been established beyond a reasonable doubt."

The basis for that remaining reasonable doubt is explained in the earlier discussion of the case against Schacht. It was not that Schacht could not have known of the aggressive objective of the rearmament program; quite the contrary, the IMT specifically recognized that anyone with a knowledge of German finances was in a particularly good position to realize that the armament policy had aggression as its object. The IMT said:[3]

> "On the other hand, Schacht, with his intimate knowledge of German finance, was in a peculiarly good position to understand the true significance of Hitler's frantic rearmament, and to realize that the economic policy adopted was consistent only with war as its object."

The basis, then, was the lack of participation in the economic program after its aggressive purpose became evident. The IMT apparently accepted Schacht's own explanation of his conduct. Of it, the IMT said:[4]

> "Schacht, as early as 1936, began to advocate a limitation of the rearmament program for financial reasons. Had the policies advocated by him been put into effect, Germany would not have been prepared for a general European war. Insistence on his policies led to his eventual dismissal from all positions of economic significance in Germany."

In the light of this reasoning, there can be no question but that Schacht would have been guilty under count two of the IMT case had he continued to cooperate in the economic program, rather than adopting a policy of opposition which eventually brought about his dismissal. If there was any doubt about it, the judgment as to Funk dispels it. The first sentence of the judgment finding Funk guilty states:[5]

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[1] Ibid., p. 310.
[2] Ibid., p. 310.
[3] Ibid., p. 309.
[4] Ibid., p. 309.
[5] Ibid., p. 304.

"Funk became active in the economic field after the Nazi plans to wage aggressive war had been clearly defined."

Then, after outlining his activity, the IMT concluded:[1]

"Funk was not one of the leading figures in originating the Nazi plans for aggressive war. His activity in the economic sphere was under the supervision of Goering as Plenipotentiary General of the Four Year Plan. He did, however, participate in the economic preparation for certain of the aggressive wars, notably those against Poland and the Soviet Union, but his guilt can be adequately dealt with under count two of the indictment."

Schacht escaped conviction because the IMT was at least partially convinced by his story that he began to put on financial brakes as soon as he was convinced of the aggressive designs of Hitler. However, when Schacht was trying to slow down rearmament, Schwerin von Krosigk increasingly was sponsoring the measures which made Schacht's objective impossible. Schacht was not only in opposition to Goering in the economic field, but also in opposition to von Krosigk in the financial field. Schwerin von Krosigk knew that if the MEFO bills were to be paid—12 billion of them—that rearmament would slow down, because the money was not there for both repayment and continued rearmament. He chose, despite that fact, to allocate the money to further armament, rather than meet the MEFO obligation. At the very best, he cast his lot with the aggressors, rather than with Schacht. The facts are discussed at length in the Schwerin von Krosigk brief of the prosecution.

Relative to later rearmament the IMT said, in its decision on Funk:[2]

"Funk became active in the economic field after the Nazi plans to wage aggressive war had been clearly defined."

As to von Krosigk, we need modify that sentence in only one respect, so that it would read: Schwerin von Krosigk continued to be active in the economic field after the Nazi plans to wage aggressive war had been clearly defined. The IMT begins its recitals on Funk with the Goering speech of 14 October 1938, at which a "gigantic increase in armaments" was announced. For Schwerin von Krosigk, we can go further back to pick up the threads, and show how, by the end of 1938, the Ministry of Finance was completely allied with and an integral part of the whole rearmament program.

[1] Ibid., p. 305.
[2] Ibid., p. 304.

It will be remembered that it was in 1936 that Schacht according to the IMT, began to advocate a limitation on armaments, and as the IMT said, because of his intimate knowledge of German finance was in a good position to realize that Hitler's "frantic rearmament" was "consistent only with war as its object." The documents certainly fully bear out the intimate knowledge which Schwerin von Krosigk had of the matters of finance and economics in the preparation of war. They also show that Schwerin von Krosigk's attitude conformed thoroughly to the will of Hitler to rearm as quickly as possible, and that Schwerin von Krosigk participated in the toplevel discussions at which the policy of more and more armament was revealed and insisted upon despite Schacht's objection.

It is worthwhile noting again the dissimilarity between Schwerin von Krosigk and Schacht. This was the time when Schacht began definitely to lose out. The IMT said:[1]

> "Goering advocated a greatly expanded program for the production of synthetic raw materials which was opposed by Schacht on the ground that the resulting financial strain might involve inflation."

As we have seen, Schwerin von Krosigk who was also on the council which had to do with raw materials and foreign exchange, went along with the program.

The IMT said:[2]

> "The influence of Schacht suffered further when, on 16 October 1936, Goering was appointed Plenipotentiary for the Four Year Plan with the task of putting 'the entire economy in a state of readiness for war' within 4 years. Schacht had opposed the announcement of this plan and the appointment of Goering to head it, and it is clear that Hitler's action represented a decision that Schacht's economic policies were too conservative for the drastic rearmament policy which Hitler wanted to put into effect."

There is no evidence that Schwerin von Krosigk opposed the plan, or Goering's appointment. He went along, fully. Schacht went on leave of absence from the Ministry of Economics in September 1937 and resigned as Minister of Economics and as Plenipotentiary for War Economy in November 1937. Schwerin von Krosigk stayed on, cooperating at the highest policy level. Certainly when one was in a position so high—a Cabinet minister—that he participated in *all* of these activities, the denial of knowledge and realization is patently absurd.

[1] Ibid., pp. 307 and 308.
[2] Ibid., p. 308.

Like Funk, Schwerin von Krosigk knew what he was doing when he continued action in late 1938. That Schwerin von Krosigk knew of the plan to smash Czechoslovakia and lent his willing aid to finance the necessary preparations is not contested. On 1 September 1938 von Krosigk wrote to Hitler. In the letter he explains the financial situation, the measures he has taken to meet the rearmament program, and the steps he has taken to meet the "basic change" in 1938 caused by retaking of Austria, the western fortifications, and the "increased tempo of armament." He ends the letter with a statement that (*EC–419, Pros. Ex. 1165*)—[1]

> " * * * the day will not be far off when the final death thrust can be dealt to the Czechs."

Schwerin von Krosigk may argue that the letter counsels caution, as it does, and that it makes Schwerin von Krosigk like Schacht. The difference is that Schwerin von Krosigk's worries are not, as Schacht's were found to be, about whether there would be an aggressive war, but one solely as to when the aggression should occur. He thought, and argued, that Germany's head start on the western democracies was not yet great enough. He said, "Most important is, *Time works in our favor* * * *. We therefore can only gain by waiting." But beyond a doubt, as early as 1 September 1938—before Goering's speech of 14 October 1938—Schwerin von Krosigk was aware that the first object of all the frantic rearmament was "the final death thrust" to the Czechs.

We can put Schwerin von Krosigk side by side with Funk. The IMT said, in discussing Funk's crimes against peace:[2]

> "On 14 October 1939, after the war had begun, he made a speech in which he stated that the economic and financial departments of Germany working under the Four Year Plan had been engaged in the secret economic preparation for war for over a year."

This would put the beginning of Funk's and Schwerin von Krosigk's most secret war preparation back to about mid–1938, when the new armament plan was announced, the Reich Defense Council was reorganized, and when the new financing plan was drawn up. In every aspect, Schwerin von Krosigk was in up to his neck.

When we come to the year 1939, we find Schwerin von Krosigk and the Ministry of Finance playing an even more important part in the war preparations; the Reich Bank, which until then had

[1] Introduced in the IMT trial as Prosecution Exhibit USA–621. The German text is reproduced in Trial of the Major War Criminals, op. cit. supra, volume XXXVI, pages 492–498.
[2] Ibid., p. 305.

been an important and an independent instrumentality of war financing, became in 1939 completely subservient to the Finance Minister. Schwerin von Krosigk, subject only to Hitler, became the predominant financial power in the Reich.

One of the two meetings cited in the IMT against Funk is the meeting of 30 May 1939. The IMT said:[1]

> "On 30 May 1939, the Under Secretary of the Ministry of Economics attended a meeting at which detailed plans were made for the financing of the war."

Similarly, the Under Secretary of the Ministry of Finance, Reinhardt, also attended the meeting. The minutes state: "To be shown to the Minister for his information." The text of the minutes makes it obvious why the IMT cited it as important. A partial translation of page 1 of the minutes states (*3562–PS, Pros. Ex. 1011*):[2]

> "Then a report was made of the contents of the 'Notes on Question of Internal Financing of the War', of 9 May of this year * * * in which the figures given to me by the Reich Minister of Finance are also discussed."

Schwerin von Krosigk had been active already in making financial plans for the prosecution of the war. What kind of a war? The minutes give a definite answer (*3562–PS, Pros. Ex. 1011*):[3]

> "First, as concerns the scope of the total production, it is clear that the economic power of the Protectorate and of the other territories possibly to be acquired must of course be completely exhausted for the purpose of the conduct of the war. It is however, just as clear that these territories cannot obtain any compensation from the economy of greater Germany for the products which they will have to give us during the war, because this power must be used fully for the war and for supplying the civilian home population. It is therefore superfluous to add any amount for such compensation to the debt of the domestic German war financing. The question as to what labor forces, new products and other commodities in the Protectorate and in the territories to be acquired can be utilized for us * * * thus can be excluded from this investigation. Insofar as it should happen that, for political reasons, deliveries without any expectancy of compensation cannot be demanded of the 'occupied' territories, to that extent we will be able to pay with debt certificates of the Reich * * *.

[1] Ibid., p. 304.

[2] Introduced in the IMT trial as Prosecution Exhibit USA–662. The German text is reproduced in Trial of the Major War Criminals, op. cit. supra, volume XXXII, pages 390–404.

[3] Ibid.

"During the war the army can reckon, out of the economy of greater Germany, substantially only with deliveries to the extent of that portion of production which in peacetime is attributed to public expenditures—minus the minimum requirements of the civilian governmental agencies. In order to cover additional requirements of the army, the economic power of the Protectorate and of the territories to be acquired during the campaign must be used."

"The war" is now the topic. And we will search in vain for even a suggestion that it is a "defensive" war. Schwerin von Krosigk is plainly participating, on the highest level, in the plan to acquire territory for Germany by force of arms. Czechoslovakia had been taken over; Poland was next. Hitler's decision had already been made, and announced at a meeting of 23 May 1939. That Schwerin von Krosigk was a key figure in the planning is shown by the evidence and discussed in the briefs.

Schwerin von Krosigk did a stupendous job. Without in the slightest degree minimizing the importance of the work of many other parts of the Hitler government, one can still assert that funds are the sinews of war preparation and war waging. Money had to be available, and it was up to Schwerin von Krosigk, as Minister of Finance, to supply that money, by taxes, long-term loans, short-term loans, proceeds of confiscations, and the like. The fact that the Finance Minister did not personally participate in all of the high-level strategy conferences where military timetables were worked out principally with military strategists is not surprising, and it does not detract from his responsibility any more than his presence at them would add to his responsibility. For von Krosigk's position was not the determination of a particular military timetable. His job was to prepare the stage for those who would ultimately determine the exact time and exact place of a particular offensive. Schwerin von Krosigk was sufficiently acquainted with the secret plans concerning particular and specific aggressions, as the documents show, so that he could provide the necessary financial assistance and so that he could suggest any modifications demanded by the exigencies of the financial situation or the financial possibilities.

When funds were needed, they were there. We have no evidence to indicate that Hitler's preparations for aggressive war suffered in the slightest from the need of reichsmarks. In Schwerin von Krosigk's particular field, the internal financing of the war, the striking thing about the documents is that they reveal no particular worry of the war mongers as to where the money would come from. Schwerin von Krosigk could be depended upon to supply it.

How, then, can the Minister of Finance, who takes care of employing "all cash and reserves" for the armament program and who curtails all other expenses in the interest of that program, deny that he played the leading role in financing the armament?

The evidence emphasizes the ability and the dedication with which Schwerin von Krosigk performed the task allotted to him in the preparation for war. It is further indicated that activities of Schwerin von Krosigk extended beyond the tax-gatherer field. His financial tasks even carried him into dealings with the SS concerning the proceeds and the loot of their horrible activities. His participation in war planning and war waging covers the entire Nazi epoch. After the war broke out, Schwerin von Krosigk showed the same energy in garnering the required funds which he displayed in making available the funds which made the launching of war possible. Schwerin von Krosigk mobilized all the forces for the financial victory, paying attention to the whole of Nazi economy as it unfolded with the occupation of most of Europe. Schwerin von Krosigk never wavered in his enthusiasm and labors for the Nazi cause. That he has admitted this before this Tribunal and has not attempted to fabricate for himself a position in the resistance movement is noteworthy. But the attempt to draw parallels between his course and that of Schacht is utterly impossible. The analogy to Funk, however, is a reality, except that Funk put a heavy shoulder to the wheel much later in the day than did Schwerin von Krosigk.

If Your Honors permit, Mr. Kempner will continue for the prosecution.

PRESIDING JUDGE CHRISTIANSON: Mr. Kempner.

Lammers and Stuckart

MR. KEMPNER: In analyzing the evidence, it will not be necessary to travel over uncharted seas. The verisimilitude between the evidence adduced against Frick in the IMT, which resulted in a finding of guilty and a sentence to death by hanging, with the evidence presented against Lammers and Stuckart is unusual. It depicts an almost identical pattern of crime, although, as we stated earlier, the evidence in this case is more abundant as to these defendants than it was as to Frick in the IMT case.

The defendants submit, however, that their positions were utterly insignificant; that their signatures under laws and decrees were purely formal, and the legislative enactments in which they participated were ineffectual from the very outset; that the reports which were being submitted to them were either obsolete when they reached them or not worthy of their interest; that the agencies of which they were members were stillborn children and

their enactments abortive; and that their knowledge of happenings in the Third Reich was as scanty as that of an average woebegone German citizen. In a word, they were walking blindfolded through the horrors of the Third Reich. Authentic captured documents from German official sources were—as these defendants would have the Court believe—the archetypes of inexactitude and error.

The phraseology of the documents in evidence is so plain and self-explanatory that they hardly call for any further interpretation. They speak for themselves. In short, these defendants and their witnesses succeeded in cluttering up the record with a mass of testimony which, insofar as one can tell, had no other purpose than to bewilder, confuse, and evade the issues.

We, of course, disagree emphatically with Lammers' and Stuckart's technique of taking such a self-deprecating view of their positions, functions, guilt, and responsibility. The evidence portrays them in their true perspective. It overwhelmingly shows that Lammers and Stuckart were architects who designed catastrophe.

In theory, it may be true that in a Fuehrer state the supreme legislative and administrative powers were vested in the Fuehrer. In practice, however, his powers had meaning and effect through the agencies which were charged with transposing the political will of the Third Reich into the phraseology of laws and decrees and to see to it that they were also being enforced. In almost every phase of this procedure Lammers and Stuckart were instrumental factors. Reference is made to the great number of criminal laws and decrees with which we have dealt at length in the individual briefs of the defendants.

These defendants were not only leaders in the Third Reich but had reputations as being outstanding authorities in law, particularly in the fields of constitutional and administrative law. It is a generally recognized maxim that no man may plead ignorance of the law as an excuse. But when trained lawyers deliberately prepared and issued laws and decrees which they knew at the time violated every standard of justice and common decency and the defined principles of civilized criminal law as well as of international law, then the seriousness of their crimes is magnified. There is a peculiar element of premeditation and deliberation in all the acts for which Lammers and Stuckart are being held responsible. It is impossible for a lawyer to sit down and draft and participate in the preparing of a more or less complicated legal document without considering the question of its legality. And, if the trained lawyer continued to turn out criminal legislation for years and years, so to say as a matter of routine, this

becomes an especially aggravating factor. Such acts have been so adjudged in the Justice case before Tribunal III.

In brief, Lammers and Stuckart were in possession of the heaviest imaginable responsibility. As lawyers, they were fully aware of this and thoroughly cognizant of the possible repercussions which their acts would cause.

The position of Keitel, whom the IMT found "did not have command authority over the three Wehrmacht branches which enjoyed direct access to the Supreme Commander," is *mutatis mutandis* comparable to that of Lammers. Defense counsel of Lammers pointed out in his opening statement* the similarity of positions held by Keitel and Lammers. Lammers had to admit on cross-examination—with the usual reservations—that "for certain military matters his [Keitel's] position is comparable to mine insofar as military and civilian matters are comparable at all."

In spite of the judgment of the IMT that Keitel as head of Hitler's military staff had no power to give orders, he was convicted on all four counts of the indictment before the IMT, including the "conspiracy" and "the planning, preparation, initiating or waging of wars" count.

In the Ministry of the Interior, Stuckart, like Frick, was a dominating influence in the waging of war. His importance constantly increased. The IMT found Frick guilty of count two of the indictment. As pointed out before, count two of the IMT is analogous to count one of this case (aggressive war count). Frick was found guilty of waging aggressive war despite the fact that "the evidence does not show that he participated in any of the conferences at which Hitler outlined his aggressive intentions." Thusly, Frick was acquitted under count one in the IMT (conspiracy count), but found guilty under count two (aggressive war count).

We submit that the Stuckart case is parallel in every particular to the Frick case. The Lammers case is also parallel to the Frick case and may further be compared to the Keitel case. The evidence which the prosecution has submitted in support of these charges is very extensive. For reasons of expediency we direct the Tribunal's attention to the individual responsibility briefs of the prosecution. The evidence which will be reviewed discloses that Lammers and Stuckart became involved in the crimes against peace, war crimes and crimes against humanity to a greater extent than Frick and is sufficient to weave a second mantle of guilt.

Dietrich

The tremendous importance of the role played by Dietrich's press propaganda in carrying through the plans and objectives

* Reproduced in section V K, volume XII, this series.

of the aggressive war machine—in promoting the concentration and stimulation of the energies of the German people as a result of such press propaganda—cannot easily be exaggerated.

The development of the press as a weapon was the most important single aspect of propaganda as a whole. The printed word has a magic of its own. Hitler saw this at an early point in his career and it was no accident that he selected Dietrich to supervise and control the press policy in furtherance of his aims.

Mr. Quincy Wright, in his article "The Crime of War Mongering" (American Journal of International Law, 1948, Vol. 42, pp. 131 and 132) says:

> "Propaganda which instigates or encourages aggression or other crimes against international law had been considered a crime, not in itself, but because of its relationship to the international delinquency or crime which it incites * * *. Where instigation of international delinquency or crime is concerned the question relates to the importance of the propaganda in producing the crime or deliquency.
>
> "Insofar as such propaganda provokes or encourages aggresgression or other international crime, it becomes a crime itself."

Dietrich was successful in supressing the editorial work of the German press to such an extent that the IMT said of it:[1]

> "Through the effective control of the radio and the press, the German people, during the years which followed 1933, were subjected to the most intensive propaganda in furtherance of the regime. Hostile criticism, indeed, criticism of any kind was forbidden, and the severest penalties were imposed on those who indulged in it. Independent judgment, based on freedom of thought was rendered quite impossible."

In such an atmosphere the criminal responsibility of Dietrich is immeasurably heightened. His control of the press became a lethal weapon in the conditioning of the people to accept aggressive wars. This weapon was as necessary for the realization of the Nazi program as the large-scale production of armaments and the drafting of military plans. Without Dietrich's press, it would not have been possible for German fascism to realize its aggressive intentions, to lay the groundwork for and then to perpetrate war crimes and crimes against humanity. The particulars in support of this position are extensively set forth for the Tribunal's consideration in the prosecution's final brief against Dietrich.

The IMT clearly followed the theory expressed by Mr. Quincy Wright in the case of the defendant Streicher.[2]

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[1] Trial of the Major War Criminals, op. cit. supra, volume I, page 182.
[2] Ibid., p. 302.

"In his speeches and articles, week after week, month after month, he infected the German mind with the virus of anti-Semitism, and incited the German people to active persecution."

Dietrich's case is more far-reaching than that of Streicher in that his guilt includes crimes against peace, as well as war crimes and crimes against humanity. Streicher was the editor of a comparatively small weekly periodical, "Der Stuermer," published in Nuernberg. At the height of its ill fame, it boasted a circulation of 600,000 whereas Dietrich had at his disposal not only Streicher's paper, but more than 3,000 other publications with a circulation of better than 3,000,000.

The evidence shows the character and intensity of the anti-Semitic directives released by the defendant Dietrich during the period to which the IMT referred in passing judgment on Streicher. Streicher's publication then was only one of the manifold vehicles which were ultimately subject to Dietrich in furthering the provocation of international crimes.

Of course, Streicher was acquitted by the IMT for crimes against peace. Concerning him the IMT stated: "There is no evidence to show that he was ever within Hitler's inner circle of advisers; nor during his career was he closely connected with the formulation of the policies which led to war." Dietrich's relation to the inner circle of advisers was quite different. Not only was he Reich press chief of Party and State, and an intimate of Hitler from 1928 on; but also the defendant was a member of that select hierarchy of Reichsleiter which included such figures as Hess, Himmler, Ley, Darré, Goebbels, Frank, and Rosenberg, with all the accessibility to top secret information which such membership necessarily entails. Dietrich was entrusted, in the field of press propaganda, with the daily responsibility for the acquisition, digest, selection, and transmission of information of all types, on all levels, from every source, and for every purpose. He issued press instructions labeled "Daily Paroles of the Reich Press Chief," which directed the press to present to the people certain themes, such as the leadership principle, the Jewish problem, the problem of living space, or other standard Nazi ideas which served as a condition precedent in tempering the masses of German people to each aggression.

The evidence before this Tribunal clearly establishes Dietrich's guilt for crimes against peace, as well as war crimes and crimes against humanity. The facts are discussed in the Dietrich brief. The application of the principle of law set forth in the Streicher case by the IMT makes the conclusion inescapable.

Before Mr. O'Haire continues for the prosecution, I just want to correct one of the figures I mentioned. This was the figure of

thirty million copies, not of thirty hundred thousand copies—as I say, of thirty million copies which were at the disposal of the defendant Dietrich for circulation in Germany.

PRESIDING JUDGE CHRISTIANSON: That is at the top of page 55. It is noted.[1]

MR. KEMPNER: Thank you, Your Honor.

PRESIDING JUDGE CHRISTIANSON: Mr. O'Haire.

Berger and Schellenberg

MR. O'HAIRE: The defendants Berger and Schellenberg found full scope for their talents in areas where activities of the SS and of the government proper were most closely fused and where the politics and the programs of the Third Reich, murderous in nature from the beginning, reached their natural fulfillment.

The record is replete with evidence of their fanatical contributions to the genocidal policy of the Third Reich. Mere reference to the briefs suffice.[2] However, the part played by the SS in crimes against peace is directed to the Tribunal's attention. Of the SS, the IMT said:[3]

> "SS units were active participants in the steps leading up to aggressive war."

Berger and Schellenberg were not minor figures in the SS; Berger was chief of the SS Main Office and Schellenberg was subordinated to Heydrich and later to Kaltenbrunner in the SD (a component part of the SS). The IMT specifically stated of SS activities:[4]

> "The Verfuegungstruppe was used in the occupation of the Sudetenland, of Bohemia and Moravia, and of Memel. The Henlein Free Corps was under the jurisdiction of the Reich Leader SS for operations in the Sudetenland in 1938, and the Volksdeutschemittelstelle financed fifth column activities there."

The defendant Berger issued the orders subordinating the Free Corps to the SS for the purpose of effecting the aggression with full knowledge of the purpose of the Free Corps. Berger was the sole link between the SS and the Free Corps. The proof shows that he supplied the Free Corps with the arms necessary to fulfill its mission.

Berger's activities did not stop there, however. He was engaged in organizing so-called defense units of forces indigenous to the occupied eastern territories, 3 weeks after the invasion of

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[1] Reference is made here to the draft copy of the closing statement.

[2] In addition to the argumentation presented orally before the Tribunal in the "closing statements," both the prosecution and defense submitted voluminous final briefs.

[3] Trial of the Major War Criminals, op. cit. supra, volume I, page 270.

[4] Ibid.

Poland. He established contact with the Dutch Nazi leaders in Duesseldorf which led to the setting up in 1940 of the Dutch special duty regiment "Westland." Immediately after the invasion of Belgium, Berger became president of DeValag, a pro-Nazi political party in Belgium under German sponsorship. He employed this party primarily to further aggressive warfare. And, he succeeded in bringing the German racial group in Yugoslavia under the SS, 6 months before the invasion of that country.

It is next to impossible to single out any one portion of the SS which was not involved in these criminal activities charged in the indictment, but it is safe to say that the evil of the RSHA (Gestapo and SD) is exceeded by none. Of it the IMT said:*

> "The nature of their participation is shown by measures taken in the summer of 1938 in preparation for the attack on Czechoslovakia which was then in contemplation. Einsatzgruppen of the Gestapo and SD were organized to follow the army into Czechoslovakia to provide for the security and political life of the occupied territories. Plans were made for the infiltration of SD men into the area in advance, and for the building up of a system of files to indicate what inhabitants should be placed under surveillance, deprived of passports, or liquidated. These plans were considerably altered due to the cancellation of the attack on Czechoslovakia, but in the military operations which actually occurred, particularly in the war against U.S.S.R., Einsatzgruppen of the Security Police and SD went into operation, and combined brutal measures for the pacification of the civilian population with the wholesale slaughter of Jews. Heydrich gave orders to fabricate incidents on the Polish-German frontier in 1939 which would give Hitler sufficient provocation to attack Poland. Both Gestapo and SD personnel were involved in these operations."

The proof shows that Schellenberg was the master mind of such projects, particularly in the creation of the Einsatzgruppen to be used after the invasion of the U.S.S.R. In May 1941 he drafted the final agreement which established the Einsatzgruppen for use in the East with full knowledge that Russia was to be invaded. An integral part of this operation was the screening and interrogating of prisoners to determine their usefulness for the illegal purposes of the Third Reich. Schellenberg headed an operation entitled "Zeppelin" which employed those selected for work on the eastern front behind Russian lines and to work with the Einsatzgruppen. The evidence in the Schellenberg case reveals that the staging of an incident for a pretext to invade Poland was only a

* Ibid., p. 266.

fore-runner to further trickery by the Gestapo and SS under the direct command of Schellenberg in creating a pretext to invade Holland. The Venlo incident was clearly an underhanded SS method to provide Hitler with sufficient provocation to march into Holland.

The record is complete. Berger and Schellenberg participated in the criminal plans of the SS in the steps leading up to aggressive wars as outlined by the IMT.

Koerner, Keppler, Pleiger, and Darre

The Tribunal's attention is drawn to the parallel activities of these defendants to the defendants Goering, Hess, and Funk who were convicted by the IMT for crimes against peace. Keppler, Pleiger, and Darre are charged with crimes against peace principally because of the significant role they played in organizing and maintaining the military economy of Germany with knowledge of the purpose to wage aggressive war. Keppler is further charged with activities in the diplomatic field as a State Secretary in the Foreign Office.

Koerner

The case of Koerner, stripped of all its details, amounts to this: He was to Goering what Hess was to Hitler. With respect to Hess, the IMT found—[1]

> "Until his flight to England, Hess was Hitler's closest personal confidant. Their relationship was such that Hess must have been informed of Hitler's aggressive plans when they came into existence."

The Tribunal said:[2]

> " * * * between 1933 and 1937, Hess made speeches in which he expressed a desire for peace and advocated international economic cooperation. But nothing which they contained can alter the fact that of all the defendants, none knew better than Hess how determined Hitler was to realize his ambitions, how fanatical and violent he was, and how little likely he was to refrain from resort to force, if this was the only way in which he could achieve his aims."

The Tribunal found Hess guilty [of crimes] against peace under counts one and two.

It is interesting to note that Koerner's defense is along the line that Goering was a man of peace, that his violent speeches, plainly aggressive in character, were not to be taken seriously, and last

[1] Ibid., p. 284.
[2] Ibid., p. 283.

that Koerner, because of his close relationship with Goering, knew and appreciated the peaceful character of the man.
The IMT, with respect to Goering, stated:[1]

> "After his own admissions to this Tribunal, from the positions which he held, the conferences which he attended, and the public words he uttered, there can remain no doubt that Goering was the moving force for aggressive war, second only to Hitler."

And in concluding its appraisal of Goering's activities, the Tribunal stated:[2]

> "His guilt is unique in its enormity. The record discloses no excuses for this man."

Koerner, the record shows, was Goering's closest personal and official associate. He first met him in 1926, and in 1928 when Goering was elected to the Reichstag, Koerner severed his private business connections so that he could be closer to Goering. He stayed with Goering through the entire period of the Nazi seizure and consolidation of power. He participated with Goering in setting up the Gestapo as an instrument of force and terror. He was the administrative head of the special "spying agency"—the Forschungsamt—an organization which monitored conversations of Germans.

Goering was appointed Plenipotentiary of the Four Year Plan in 1936, and designated Koerner as his permanent deputy. Koerner was also Goering's permanent deputy in the General Council of the Four Year Plan. The evidence fully establishes Koerner's special knowledge of the military character of the Four Year Plan, that it was intended as, and developed into an instrument to make a military machine to further Germany's policy of aggression.

Koerner, Keppler, and Schwerin Von Krosigk were present at the secret conference when Goering informed them of the nature of Hitler's secret memorandum of August 1936 which discussed the true purposes of the Four Year Plan. In addition to being advised by Goering of Hitler's secret memorandum, Koerner admitted that Goering gave him this memorandum to read and that he read it. Koerner testified that he never spoke to anyone about this secret memorandum of Hitler, except to Goering and the other persons present at the meeting. There were only three copies of this memorandum—one went to Goering, another was later given by Hitler to Speer, and the third is not accounted for.

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[1] Ibid., p. 280.
[2] Ibid., p. 282.

The details of Koerner's participation in the Four Year Plan after knowledge of the above, are outlined in detail in our brief. Koerner also had special knowledge of the planning for the Russian aggression. He was Goering's deputy in the Economic Leadership Staff East, which engaged in the planning and exploitation of Russia. This activity constitutes, as to Russia, participation in the "planning, preparation, or initiation of aggressive war." As to the other Allied Powers at war with Germany, it constitutes participation in the "waging of aggressive war." The evidence shows that the planning involved the utilization of the industrial potential of Russia for the further waging of aggressive war already in existence.

In 1942, Koerner became a member of the Central Planning Board. This board, among other things, determined the "requirements" and over-all allocation of slave labor. There were originally three members of this board, namely, Speer, Milch and Koerner. In 1943 Funk was added. For the participation in the activities of the Central Planning Board relating to the slave-labor program, Speer, Milch, and Funk have been found guilty. Koerner is the remaining member of the board. It is important to note that Koerner had knowledge that the utilization of slave labor was part of the program for waging aggressive war, and that he participated in the execution of that program. Because of his knowledge of the program, and its use as an instrumentality for waging war, Koerner is not only guilty of war crimes and crimes against humanity in connection with his slave-labor activities, but his participation in this program also establishes his guilt for crimes against peace.

Keppler

One year before Hitler seized power, Keppler became Hitler's economic adviser, and in March 1933 he was appointed Hitler's deputy for economic questions. Shortly thereafter, he was given a special assignment by Hitler to build up the German raw material base, particularly in the field of strategic military materials. Thus, he laid the foundation for Germany's main industrial capacity for synthetic rubber, synthetic fuel, synthetic fats, and synthetic fibers. His over-all participation is well described by Keppler. He testified (*Tr. pp. 19313 and 19314*):

> "Frequently Goering ordered me to report to him and on these occasions I had to give a very lengthy and detailed report concerning the work that I had done up to that stage. In addition to that, Goering was absolutely satisfied in every respect with the work that I had done up to that time. * * * Goering was really a personality if one had personal contact

with him. *He told me frankly that after all he himself didn't know a single thing about economy, and he ordered me to carry on my work on a much larger scale.*" [Emphasis supplied.]

In connection with Keppler's appraisal of Goering, it is interesting to note that Goering frankly admitted that he (Goering) did not know a thing about economy. This is a significant statement in view of the defense which Koerner interposed to the effect that Goering was the sole responsible person in connection with the operation of the Four Year Plan and that he, Koerner, merely was his adviser without authority or responsibility.

Keppler was an expert in essential specialized fields, and records show that his participation in these fields was substantial and of great importance to further the economic mobilization for war. Keppler's Office for Raw Materials and Synthetics was incorporated in October 1936 into Goering's Four Year Plan. Keppler was present at the conferences preceding the creation of the Four Year Plan. One significant conference, to which we call attention, is that of 26 May 1936 when Goering addressed his group of experts stating that he was opposed to any financial limitations on war production and that all measures were to be considered from the standpoint of an assured waging of war.

Keppler, like Koerner, had special knowledge of the military character of the Four Year Plan. He, too, was informed by Goering, prior to the public announcement by Hitler of the Four Year Plan, of the contents of Hitler's secret memorandum of August 1936. He was present at the meeting when Goering confidentially informed those present of the military nature of the Plan in connection with the preparations for war. Keppler's participation thereafter must be viewed from this very significant fact relating to knowledge. Within the Four Year Plan, Keppler was appointed to the Council of Ministers as the expert on synthetic and raw materials.

As to knowledge, a comparison with the Farben case shows that it was Keppler who negotiated with I. G. Farben with respect to the construction of the synthetic rubber plants. It is apparent that Keppler cannot be believed when he stated that he participated in setting up the synthetic rubber program as a measure of peacetime economy, since he was informed by Goering of the contents of Hitler's secret memorandum regarding the Four Year Plan.

The record shows that prior to the time when Goering informed Keppler of Hitler's secret memorandum, Keppler discussed the synthetic rubber program directly with Hitler and that Keppler acted as Hitler's deputy when discussing this program with the

army and the Finance Ministry. The record also shows that after September 1936 Keppler acted as liaison between the Four Year Plan, the army, and the I. G. Farben. Thus, an official report stated (*NI–6194, Pros. Ex. 2714*) :

> "On 7 October * * * the chief of the Military Economic Staff * * * informed Mr. Keppler that in view of the new rubber program, which came within the Four Year Plan, he had no objection to the capacity of the three plants to be erected being increased * * *."

In 1937, Keppler attended the meeting with Goering where the discussion with respect to increasing production of iron took place.

* * * * * * *

As a result of this discussion, the Hermann Goering Works were set up to exploit low-grade iron ore. Keppler was appointed to the Aufsichtsrat of the Hermann Goering Works. All this occurred at a time when Keppler had special knowledge of the military objectives of this economic preparation.

In the beginning of 1938, Keppler also became engaged in other activities which gave him special knowledge of the aggressive character of the planning. He was appointed State Secretary in the Foreign Office and was assigned special tasks in connection with the preparations for the accomplishment of the Austrian Anschluss. As the pillars of Austrian sovereignty shook, Keppler increased the tempo of Nazi demands. It was Keppler who backed up Hitler's threats of informing Miklas that 200,000 German soldiers were being assembled at the Austrian border, ready for invasion.

He himself has described in part the nature and extent of his participation in Austria before the Anschluss. In a letter to Seyss-Inquart, dated 30 June 1938, Keppler stated (*NID–14959, Pros. Ex. 2717*) :

> "In addition, Field Marshal Goering charged me with extensive work with the Hermann Goering Works and other industrial enterprises of the State. I also received my first big assignment by Ribbentrop. It was a very important, but also difficult, affair which I have to settle under strictest confidence, which, therefore, is not suitable for a publication in the press. I just came back from the Foreign Office where I inspected my future offices. I will have to conduct my office activities in various buildings, because my office remains where it was."

Keppler was Germany's chief agent in carrying out special research projects in the countries which were to be invaded.

After the Munich Agreement, Goering made a speech on 14 October 1938. The report[1] states (*1301–PS, Pros. Ex. 971*):[2]

> "The Sudetenland has to be exploited with all the means. Field Marshal Goering counts upon the complete industrial assimilation of the Slovaks. Bohemia-Moravia [Tschechen] and Slovakia would become German dominions. Everything possible must be taken out. The Oder-Danube Canal has to be speeded up. Searches for ore and oil have to be conducted in Slovakia, notably by State Secretary Keppler."

Can it be seriously urged that Keppler was not informed of the aggressive plans against Czechoslovakia?

There is a very significant fact in connection with Keppler's activities and that is the "timing" of his various tasks. He appears in Austria just before the invasion. When that is an accomplished fact, he moves on to a special job in Czechoslovakia. When that country is taken over, he moves to southeastern Europe. It is more than coincidence that he was in the vanguard even before a number of the aggressions were launched.

Mr. Fitzpatrick will continue for the prosecution.

Pleiger

MR. FITZPATRICK: Pleiger operated in a specialized industrial field—coal, iron, and steel. His activity in these fields was substantial and contributed directly and significantly to the industrial and economic mobilization for aggressive war. Here again, participation in this specialized sector was with knowledge of the military objectives of the programs in which he participated.

His early start in connection with the economic mobilization was in the Keppler bureau. He was the top expert in the iron department of the Office for German Raw Materials and Synthetics. As early as 1936, Pleiger was sufficiently important to be called in by Goering in the meeting of the select group of experts. He heard Goering's now well known address of 26 May 1936 in which the problems in connection with war mobilization were discussed. With the promulgation of the Four Year Plan, Pleiger, like Keppler, went over to Goering's Office. Thereafter, Pleiger participated in many important meetings where the fundamentals of the Four Year Plan production program were planned in detail.

On 17 March 1937 he was present at a meeting where Goering opened the discussion with these words (*NI–090, Pros. Ex. 966*):

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[1] Goering's speech is contained in a report made on a meeting at the Reich Air Ministry which was in the files of General Thomas, Chief of Economic Armament Office of OKW.

[2] Introduced in the IMT trial as Exhibit USA–123. The German text is reproduced in Trial of the Major War Criminals, op. cit. supra, volume XXVII, pages 122–169.

"This may well be the most important session concerning the Four Year Plan dealing with the questions of the iron and steel production, its output, capacity, supply of raw materials, and iron distribution. Primarily involved is German ore procurement. * * * *lack of ore must not endanger the program of munitions supply or of armaments in case of war.* Everything possible must be undertaken on the part of private industry and the State must take over when private industry has proved itself no longer able to carry on." [Emphasis supplied.]

The Hermann Goering Works was the brain child of Pleiger, not of Goering. This he admitted when he testified (*Tr. pp. 14802 and 14803*)—

"I was firmly convinced that the iron and steel situation was one which was bound to interest Goering, as Plenipotentiary for the Four Year Plan. * * * so, in my opinion, the situation was very favorable, and I decided that I would by-pass the official channels, through Office Chief Loeb and State Secretary Koerner, and approach Goering directly. * * * I * * * had a short memorandum submitted to Goering, in his capacity as Plenipotentiary for the Four Year Plan. * * * It contained all the arguments by which I might hope to rouse Goering's interest. That is why I pointed out that the plant was of military importance because we were arming all along the line, the foreign currency question; especially, however, I made it clear to him what it would mean if there should be a miners' strike in Sweden, when in only 3 months the whole German industry would come to a standstill. The ore stocks at that time amounted to not over a 4 week's supply. *It was a situation for me by which I could make Goering take a bite out of the sour apple.* There couldn't have been a more favorable argument." [Emphasis supplied.]

In July 1937 the announcement of the founding of the Hermann Goering Works was made. Pleiger's participation in the setting up of this instrumentality and his utilization of the Hermann Goering Works for the development of a wider base for iron ore and iron is fully disclosed by the records.

The only question presented as we see it is whether Pleiger had knowledge of the military objectives in connection with this matter. From all the evidence, the record is clear that he did have such knowledge. He acquired further insight in the planning to take over the Austrian deposits in the "A" case. He was present at the meeting of 17 March 1937, along with Koerner and Keppler, when Goering stated (*NI–090, Pros. Ex. 966*) :

"* * * it is important that the soil of Austria is reckoned as part of Germany in case of war. Such deposits as can be acquired in Austria must be attended to in order to increase our supply capacity. * * * supply for native German soil, in which in the A-case receipts from Austria with all her possibilities are to be added * * *. In A-case one could count on 6 million tons per year from Austria."

His participation in the preparations for the exploitation of industrial property in Czechoslovakia appears from the fact, among other things, that the Witkowitz Iron and Steel plant in Bohemia and Moravia which was occupied on 14 March 1939, the day prior to the full scale invasion of Czechoslovakia, was immediately taken over by a board to control and operate the plant for the Reich. The chairman of that board was Pleiger. The board was dominated by the Hermann Goering Works. Pleiger, when asked whether he was aware of such acquisitions, answered: "I don't think there was any acquisition about the carrying out of which I did not know."

In connection with the spoliation activities of Pleiger in Czechoslovakia, in Poland, in France, and in Russia, the details are set forth in our briefs. We also emphasize that Pleiger's activity in the acquisition of industrial property in occupied territories matches similar activity by Roechling. We have already pointed out that as to Roechling the General Tribunal in the French Zone held that this constituted the waging of aggressive war within the meaning of the Control Council Law No. 10. We ask for a similar finding with respect to Pleiger.

Pleiger's activities in connection with slave labor on behalf of the Hermann Goering Works and on behalf of the Reich Association Coal, are detailed in our brief. The evidence shows that he had knowledge of the program regarding the utilization of slave labor as an instrumentality for the waging of war, and he substantially participated in carrying that program out. In addition to constituting war crimes and crimes against humanity, this particular activity of Pleiger constitutes the waging of wars of aggression under the meaning of Control Council Law No. 10.

Darré

Among the many and varied fields which of necessity must be regimented in mobilizing a national economy for war, food is of major importance. The defendant Richard Walther Darré is responsible for mobilizing the agricultural and food resources of Germany, for developing the war important autarchy program of the Four Year Plan, and for formulating plans to acquire the

food resources of European countries for the purpose of preparing for, and waging aggressive war.

Darré's general knowledge of Hitler's aggressive objectives is the result of his early association with the Nazi Party. His membership in the NSDAP dates from 1930; his membership in the SS dated from 1931. Directly following Hitler's seizure of power in 1933, Darré was appointed a Reichsleiter, thus becoming one of the seventeen members of the hierarchy of the Nazi Party. At the same time he acquired the high and responsible government position of Reich Minister of Food and Agriculture. Later he was appointed by Hitler as the Reich Peasant Leader. In his field, his position and his functions are analagous to those of Funk in economic mobilization.

Darré, as a member of Hitler's Cabinet, signed the law restoring the Wehrmacht in 1935.* Darré, in conjunction with the Plenipotentiary General for War Economy, drafted plans relative to mobilizing the German food economy for war. The purpose was to make available all of the economic forces necessary to the conduct of war. In the month following the Hossbach conference of November 1937, Darré prepared a comprehensive program relating to the organization of the war food economy. He also issued the administrative decrees relating to the government control of agricultural products. According to this plan, all vitally important foodstuffs were to be covered by a system of rationing certificates. This was effected by Darré's "Decree on the Safeguarding of the Vital Necessities of the German People." This decree and its supplementing legislation was put into effect 4 days before the Polish aggression.

After the invasion of Austria, Darré perfected his plans for mobilizing Germany's agricultural economy for war. In connection with the Tribunal's question to Mr. Amchan regarding the Munich conference which took place in September 1938, it is interesting to note that on 8 September 1938, Darré, as Minister of Food and Agriculture, and Frick, as Reich Minister of the Interior, issued a secret order calling for an acceleration in the work of their subordinate agencies engaged in mobilizing the food economy. This order stated among other things (*NG–465, Pros. Ex. 1032*):

> "Since the Fuehrer and Reich Chancellor has ordered the preparation for economic mobilization to be speeded up, one of the most urgent tasks of the leading officials in charge of the establishment of the war food offices will be to commence immediately, if they have not already done so, the preliminary work

* Law of 16 March 1935.

according to the mobilization calendar and to insure its speedy completion by the temporary assignment of assistant workers. The deadline is 15 October 1938."

At the same time that this order for accelerated mobilization was issued, secret decrees were prepared and signed by Darré, defining the particular field of activity of various Reich agencies that were concerned with the questions of food and agriculture. These regulations contain the detailed provisions for the conduct of activities during the first 4 weeks after the outbreak of war. In addition, provision was made for regulating the food economy during the course of war.

Darré set up the administrative machinery and provided himself with a uniform and closely knit organization. This made it possible for him to control and direct completely the food supply of the armed forces and civilian population.

The timing of Darré's orders in relation to the threatened invasion of Czechoslovakia is significant. Darré's activities immediately prior to the aggression against Bohemia and Moravia again show that he had knowledge of the aggressive character of his measures designed to further continuing aggression by Germany. It was only a month before the invasion of Bohemia and Moravia that Darré directed a survey of the food supply situation for the express purpose of controlling and directing that supply during war. This order was issued by Darré on 11 February 1939. During a Darré-Goering conference in February 1939, relating to the preparation measures respecting the grain situation, Goering put to Darré the question of the absolute minimum of grain needed as national reserve in order to be prepared for the occurrence of the "A" case. Darré had the answer: A grain reserve of at least six million tons was required. The purpose of the grain storage program undertaken to reach that huge figure assumes further significance by virtue of the fact that at the time of the attack against Poland, Darré had succeeded in accumulating a war grain reserve exceeding the six-million-ton figure.

On 27 August 1939 Darré issued a decree which put into effect the food ration plans which he had theretofore prepared. Details of the rationing program for the first 4 weeks of the war included the issuance of ration cards of the detailed administration of wartime food controls. The same day, 27 August 1939, Darré issued another decree setting into motion the administrative agencies entrusted with the allocation and administration of the food economy on a wartime basis. However, they had been secretly drafted and signed a year before with the intention of issuing them if the threats against Czechoslovakia produced war. In August 1939 it

was plain to Darré and the other Reich Ministers that case "A" was now at hand, and those decrees were issued.

That Darré knew his preparations in this particular field were for the waging of aggressive war is clear. Shortly after the invasion of Poland, he made a report to Goering and to Hitler dated 27 November 1939, which stated (*NG–453, Pros. Ex. 1043*):

> "The whole work of agrarian policy since the seizure of power was already dominated by the preparation for a possible war.
>
> * * * * * * *
>
> "The fact that Germany could enter this war with its supply position as it is despite the heavy demands made on agriculture for a period of many years, is due primarily to the efforts of the agrarian sector in the battle of production. Henceforth the issue depends on insuring and maintaining to the widest possible extent the degree of intensity already attained."

Darré's activities are summarized in one short sentence which he wrote after the war was under way (*NID–12720, Pros. Ex. 1048*):

> "In a gigantic effort before 1939, I created the prerequisite which made it possible for the Fuehrer to wage this war at all from the point of view of food."

We turn now to the discussion of war crimes and crimes against humanity.

PRESIDING JUDGE CHRISTIANSON: It seems to be the time for our recess, but before we recess I might inquire of prosecution counsel if the copy which you have given us, your oral argument which consists of 114 pages, constitutes your entire argument.

MR. FITZPATRICK: That is the complete argument.

PRESIDING JUDGE CHRISTIANSON: Well, in that event it is possible that the oral argument for the prosecution will be completed before the days usual working hours are consumed, and we take it that defense counsel will be ready to proceed with his argument, the first defense counsel, if that becomes feasible or possible. Very well.

We will now recess until 1:30 p.m.

(The Tribunal adjourned until 1330 hours, 9 November 1948.)

[Afternoon Session]

THE MARSHAL: Military Tribunal IV is again in session.

PRESIDING JUDGE CHRISTIANSON: Mr. Marshal, are all the defendants present in court?

THE MARSHAL: If it please the Tribunal, all the defendants are present except Schellenberg and Stuckart who are in the hospital, and Keppler who is absent due to illness.

PRESIDING JUDGE CHRISTIANSON: Very well. At this afternoon's session Judge Powers will preside.

JUDGE POWERS, presiding: Are you ready to proceed, Mr. Fitzpatrick?

MR. FITZPATRICK: Yes, Your Honors.

JUDGE POWERS, presiding: You may proceed.

MR. FITZPATRICK: Thank you. We come now to the general subject of war crimes and crimes against humanity.

COUNT THREE—WAR CRIMES, MURDER AND ILL-TREATMENT OF BELLIGERENTS AND PRISONERS OF WAR

In June 1945, a United States Military Commission was convened to try the German civilian, Peter Back. He was charged with having violated (*2559–PS, Pros. Ex. C–245*)—

> "the laws and usages of war by willfully, deliberately, and feloniously killing an American airman, name and rank unknown, a member of the Allied Forces who had parachuted to earth at said time and place in hostile territory, and was then without any means of defense."

The Commission found Back guilty as charged and imposed death sentence on him.

The case of this German civilian was by no means an isolated one. A great many German civilians were tried and convicted after the war by the United States and British Courts Martial for having mistreated and murdered defenseless Allied soldiers who had been forced to bail out of their disabled planes and land on German territory. The German civilians who were thus brought to justice paid the supreme penalty, the sentence of death, because they were murderers. But they were only the trigger men turned into murderers by the leaders who had encouraged and incited them to commit murder by promising them impunity. The systematic slaying of Allied soldiers by the German populace was the direct result of a vicious scheme which was evolved and promoted by the highest governmental agencies of the Third Reich. The defendants Lammers, Dietrich, and Ritter played a conspicuous part in this scheme.

The International Military Tribunal held that—*

> "When Allied airmen were forced to land in Germany, they were sometimes killed at once by the civilian population. The police were instructed not to interfere with these killings, and the Ministry of Justice was informed that no one should be prosecuted for taking part in them."

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* Trial of the Major War Criminals, op. cit. supra, volume I, page 229.

This was the official policy.

The evidence which the prosecution has submitted in support of the further charges in count three of the indictment is very extensive. We shall not attempt today to describe again the terrible events which the documentary evidence so eloquently portrays. The facts establishing the criminal responsibility of each defendant under count three will be outlined in detail in the individual briefs.

It is well established by the laws of war that a defenseless enemy who surrenders to the mercy of the victor shall not be killed or wounded but shall be taken as a prisoner. This provision is embodied in Article 23 of the Hague Convention. Equally revered is the rule that prisoners shall be humanely treated as embodied in Articles 4 through 20 of the Hague Regulations and the Geneva Convention of 1929.

The crimes committed against prisoners of war have been established by the IMT—[1]

> "Prisoners of war were ill-treated and tortured and murdered, not only in defiance of the well established rules of international law, but in complete disregard of the elementary dictates of humanity."

The defendant Berger was responsible as Chief of Prisoner of War Affairs for such crimes. After 1 October 1944, he was at the apex of the chain of command. One of the most disgraceful acts committed in this connection was the brutal murder of the French General Mesny, a prisoner of war in German custody. This is not the first time that the Mesny case has come to the attention of the Nuernberg Tribunals. In finding the defendant von Ribbentrop guilty of the commission of war crimes and crimes against humanity the IMT said:[2]

> "In December 1944 von Ribbentrop was informed of the plans to murder one of the French generals held as a prisoner of war and directed his subordinates to see that the details were worked out in such a way as to prevent its detection by the protecting powers."

In finding the defendant Kaltenbrunner guilty of the commission of war crimes and crimes against humanity, the IMT said:[3]

> "In December 1944 Kaltenbrunner participated in the murder of one of the French generals held as a prisoner of war."

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[1] Ibid., p. 227.
[2] Ibid., p. 287.
[3] Ibid., p. 292.

At the time the plot to murder General Mesny was conceived and continuing to the time it was actually carried out, Berger was Chief of the Office of Prisoner of War Affairs. He knew of the insidious plan from the very start and it was Berger who picked General Mesny to be murdered in accordance with the plan. The defendants Steengracht and Ritter participated in the cover-up in order to prevent its detection by the protecting powers, and by the civilized world at large.

The killing of confined prisoners, as well as forced marches of prisoners, was also carried out in direct violation of the laws and customs of war. Under the provision of this policy, the defendants of the Foreign Office were fully advised and prepared "cover up" diplomatic notes to the protecting powers upon inquiry.

No defense, and no mitigating circumstances, can be adduced in connection with these acts. The defendants in this case are more culpably responsible and deserve no less punishment for such crimes than the German soldiers and civilians who have been sentenced to death for enforcing the murder policy transmitted to them from above.

COUNT FIVE—WAR CRIMES AND CRIMES AGAINST HUMANITY, ATROCITIES AND OFFENSES COMMITTED AGAINST CIVILIAN POPULATIONS

Count five of the indictment charges certain defendants with criminal responsibility for atrocities and offenses committed against civilian populations. The criminal conduct involved under these charges is so wide sweeping that we make no extended comment here. The defendants are charged with criminal participation, under the requisites of criminal responsibility set forth in Article II, Control Council Law No. 10, for the following, among other types of conduct: The systematic evacuation of non-Germans from their homes and the resettlement of non-German areas by so-called "ethnic" Germans; the forcible "Germanization" of persons of foreign nationality who were thought to fulfill the mystic standards of so-called "racial" Germans; the deportation to forced labor, the confinement in concentration camps, and the millions of cases of liquidation of those persons who were not found to fulfill the mystic standards of alleged racial Germans; the forced resettlement into the Waffen SS of prisoners of war and civilians of military age from countries overrun by the Wehrmacht; the use of a perverted judicial process as a weapon for the suppression, persecution, and extermination of opponents of the Nazi occupation and of alleged "inferior peoples"; the arrest, imprisonment, deportation, and murder of so-called hostages; the persecution, torture, and extermination of the Jews who

fell into the clutches of Nazi Germany with each succeeding aggression and the planning and the execution of a program to exterminate all surviving European Jews beginning in the winter of 1941 and 1942; the deprivation of civil rights and the expropriation of the property of Austrians, Czechs, Poles, and other nationals in the occupied countries; and the receipt, conversion, and disposal for the benefit of Germans or the German Reich of all properties taken from the victims subject to extermination.

Concerning these crimes, no new legal problem can be raised here. The law is clear. Except where the defendants have claimed noninvolvement, which we will answer in our briefs, the over-all defense has been to claim superior orders or what has variously been termed as necessity, duress or compulsion. This general defense will be discussed later.

If Your Honors please, Mr. Rockler will continue for the prosecution.

COUNT SIX—PLUNDER AND SPOLIATION

MR. ROCKLER: May it please the Court. Under count six of the indictment very extensive charges have been made, based upon a wide range of conduct by the defendants dealing with divers kinds of property in the several economies of the occupied territories. It is well beyond the compass of the closing argument to consider each legal issue which has been raised or is essentially involved in these charges. Detailed analysis of the legal principles applicable to these kinds of international crimes has been offered in a separate brief upon the subject. Here we shall discuss only certain general questions of law.

The principal issues involved in the cases of alleged spoliation, it seems to the prosecution, are—

1. Do the laws and customs of war apply to invasions and occupations pursuant to acts of aggression, such as the invasions and occupations of Austria, the so-called Sudetenland, and the so-called Protectorate of Bohemia and Moravia?

2. Do general standards governing the conduct of belligerent occupation exist? If so, what are the limitations on the conduct of the occupant in the course of belligerent occupation?

3. Under what conditions is the belligerent occupant entitled to exercise authority over property in the occupied territory under the obligation to maintain public order and safety?

4. What protections are afforded to private property in occupied territory and under what circumstances do these protections disappear?

5. Do the laws and customs of war limit the belligerent occupant in dealing with public, or state-owned properties?

6. For what forms of participation in spoliation is the individual defendant criminally responsible?

7. Is there a special right to violate the provisions of the Hague Convention in the case of "military necessity" such that the belligerent occupant may generally exploit the occupied territories in furtherance of the waging of war?

8. Can the defendants be held criminally responsible for the spoliation of property in cases where they have invested additional capital in the seized or administered enterprises such that, regardless of removals of capital stock and equipment, the total value of the property has increased?

1. Austria and Czechoslovakia.—It is contended by the defense that the rules governing belligerent occupation cannot be applied to the territories of Austria, the Sudetenland, Bohemia, and Moravia because these territories were occupied without the waging of actual hostilities. But the evidence in this case and the determinations and findings of the International Military Tribunal establish conclusively that the occupations of each of these areas was a direct consequence of the threat of force or the use of force on the part of the German State. That is, the invasion and occupation of each of these territories was an act of aggression. In each case German forces massed upon the frontiers of the country; in each case ultimatums were delivered; in each case "voluntary" accession of the government of the occupied territories was obtained through coercion; in each case the territory was declared to have become a part of the German Reich in substance; and in each case the occupation was a part of an aggressive plan. In truth, as Lord Halifax has said, referring to such invasions and occupations, "wars without declarations of war" occurred. (*Documents concerning German-Polish relations and the outbreak of hostilities between Great Britain and Germany on 3 September 1939,* Foreign Office, Misc. No. 9 H. M. Stationery Office, London (1939), p. 15.) When the general European conflict was waged, the Allied states proclaimed, as this Tribunal may judicially notice, that the liberation and reconstruction of the frontiers of Austria and Czechoslovakia were included within the war aims [of the Allies]. Allied armies were in the field contesting on behalf of the true governments and the population of these lands.

In determining the applicability of the laws and customs of war to the occupation of Bohemia and Moravia, the International Military Tribunal found that a hostile occupation by force or the threat of force is governed by the traditional laws of war—*

* Trial of the Major War Criminals, op. cit. supra, volume I, page 334.

"Bohemia and Moravia were occupied by military force. Hacha's consent, obtained as it was by duress, cannot be considered as justifying the occupation. * * * *The occupation of Bohemia and Moravia must therefore be considered a military occupation covered by the rules of warfare.* Although Czechoslovakia was not a party of the Hague Convention of 1907, the rules of land warfare expressed in this Convention are declaratory of existing international law and hence are applicable." [Emphasis supplied.]

Furthermore, in judging the criminality of the SA, the International Military Tribunal indicated adherence to the principles that occupations pursuant to acts of aggression are governed by the rules of war. The judgment of this point very definitely implies that the occupation of both Austria and the Sudetenland could and did give rise to war crimes and crimes against humanity—*

"Isolated units of the SA were even involved in the steps leading up to aggressive war and in the commission of war crimes and crimes against humanity. SA units were among the first in the occupation of Austria in March 1938. The SA supplied many of the men and a large part of the equipment which composed the Sudeten Free Corps of Henlein * * *."

The judgment of the IMT appears to be quite explicit in meaning. But if any doubt should exist, it is fully dispelled in the analysis of the judgment by Donnedieu de Vabres, French member on the Tribunal. Observing that the Tribunal convicted von Schirach of crimes against humanity in Austria, and that such crimes had to be linked with crimes against peace or war crimes, according to the general principle of the Tribunal, de Vabres explained:

"That is to say that the occupation of Austria being the effect of an aggressive act assimilated by the Tribunal to the character of a war operation, the designation 'war crime' is applicable to common law crimes committed on its territory." (De Vabres, the judgment of Nuernberg and the principle of legality of offenses and penalties, in: Review of Penal Law and Criminology, Brussels, July 1947, as translated by J. Herrison, pp. 14 and 15.)

We submit that the judgment of the International Military Tribunal sustains the position of the prosecution and that the determination of the IMT on this point is controlling under Article X of Ordinance No. 7.

* Ibid., p. 274.

There is nothing novel in the idea that a "belligerent occupation," that is, an occupation governed by the rules of the Hague Convention of 1907, such as to give rise to war crimes, may exist in the absence of actual armed hostilities. As Quincy Wright has stated, "the law of war has been held to apply to interventions, invasions, aggressions and other uses of armed force in foreign territories even if there is no state of war * * *." (Quincy Wright, "The Law of the Nuremberg Trial," American Journal of International Law, 1947, vol. 41, p. 61.)

We conclude that war crimes did arise in law in the German occupation of Austria, the Sudetenland, Bohemia, and Moravia.

2. General standards.—The prosecution submits that the specific laws and customs of war regulating the belligerent occupant in his conduct with regard to various kinds of property in the occupied territories express particular applications of general principles and standards which govern belligerent occupation. These principles require that the occupant may not (1) exploit the occupied territory beyond the needs of the army of occupation; (2) drain the occupied territory beyond the resources of the economy; (3) disregard the needs of the inhabitants; or (4) utilize industries in the occupied territory for the furtherance of war production.

From a consideration of several of the articles of the Hague Regulations, the International Military Tribunal concluded[1]—

> "* * * under the rules of war, the economy of an occupied country can only be required to bear the expense of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear."

Similar principles were applied in the Krupp case (Case 10). To quote from the judgment[2]—

> "* * * the economic substance of the belligerently occupied territory must not be taken over by the occupant or put to the service of his war effort—always with the proviso that there are exemptions from this rule which are strictly limited to the needs of the army of occupation insofar as such needs do not exceed the economic strength of the occupied territory."

And further—

> "* * * if as a result of war action, a belligerent occupies territory of the adversary, he does *not* thereby acquire the right to dispose of the property in that territory, except according to the strict rules laid down in the Regulations. The economy of

[1] Trial of the Major War Criminals, op. cit. supra, volume I, page 239.
[2] United States *vs.* Alfried Krupp, Case 10, Volume IX, section XI, this series.

the belligerently occupied territory is to be kept intact, except for the carefully defined permissions given to the occupying authority—permissions which all refer to the army of occupation. Just as the inhabitants of the occupied territory must not be forced to help the enemy in waging war against their own country or their own country's allies, so must the economic assets of the occupied territory not be used in such a manner."

The General Tribunal at Rastatt, in the case against Hermann Roechling[1] and others, found the defendant Hermann Roechling guilty of spoliation in that, among other things, he utilized French steel enterprises "for the purpose of bringing about, at the expense of the occupied country, the maximum increase in the war potential of the Reich."

These standards are set forth explicitly in several articles of the Hague Regulations and they have long been recognized in the writings of eminent jurists such as Garner, Oppenheimer, and Feilchenfeld, who have considered the subject.

Where requisitions or confiscations of specific articles are involved in the facts of Case 11, the Tribunal may well look to the precise and controlling Articles of the Hague Regulations. But when, in addition, vast programs for the exploitation of the occupied territories are shown to have been conceived or executed or aided by the defendants, such programs should be judged by the fundamental principles of the Convention, rather than its detail. This was the standard applied by the International Military Tribunal in parallel cases.

3. Public order and safety.—Article 43 of the Hague Regulations provides[2]—

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

This article permits the occupying power to expropriate or seize either public or private property where necessary to preserve public order and safety. Accordingly, if private property is abandoned, the occupying power may take possession to insure that the property is not destroyed and to reestablish employment. The occupying power is required in such a case to treat this possession as a conservatory for the rightful owners' interest.

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[1] The indictment, judgment, and judgment on appeal in the Roechling case is reproduced as appendix B.

[2] Annex to Hague Convention IV, 18 October 1907, TM 27–251, Treaties Governing Land Warfare (United States Government Printing Office, Washington, 1944), page 31.

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Public property, which of necessity must be abandoned by the legitimate power, may also be taken over and operated by the occupant for the same reasons. The necessity for protecting the occupation forces against the dangers of attack may further justify certain types of seizures or expropriation in the interest of public order and safety under Article 43. But this particular phase of securing public order and safety is provided for more specifically in other parts of the Hague Regulations.

The expropriation of property, whether public or private, when required by public order and safety, in no way authorizes the use of such property in violation of the over-all prohibitions against using the property of the enemy territory for needs other than those of the occupation. Seizure which is found necessary for the protection of public order and safety may legitimately be followed only by such action as serves to maintain public order and safety against the threat which occasioned seizure. Where property has been taken over under circumstances which make it clear that these requirements were not the motivating factor, or even considered as reason, the taker cannot later be heard to say that his deed was justified by the needs of public order and safety. To illustrate, seizure of property to provide for German economic and war needs belies a later claim in the course of criminal proceedings that the property was seized under Article 43.

While Article 43 authorizes and requires the occupant to maintain public order and safety, it also limits his activities. The restriction is contained in the clause which requires the occupant to respect the laws in force in the occupied territory unless absolutely prevented.

This provision simply reflects one of the basic standards of the Hague Convention—that personal and private rights of persons in the occupied territory shall not be infringed except as justified by emergency conditions. The occupant is forbidden from imposing his own tastes in municipal law. Enactments by the German occupation authorities which were designed to propagate Nazi racial theories very surely cannot be justified by the necessities of public order and safety.

Where discriminatory laws are passed which affect the property rights of private individuals, subsequent transactions involving such property have been repeatedly held to be violations of both Article 43 and Article 46. For example, the Krupp Tribunal found criminal the lease of a building in Paris from an Aryanization "trustee."

4. Private property.—The basic provision of the Hague Regulations dealing with private property is Article 46, which provides*—

"Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

"Private property cannot be confiscated."

The requirement that private property must be respected is, of course, a broader protection for the inhabitants of the occupied territories than the prohibition against confiscation. Violation of this protection need not reach the extreme of confiscation. Under this article, we submit, interference with any of the normal incidents of enjoyment of quiet occupancy and use is forbidden. Such incidents include control of the purpose for which the property is to be used and disposition of the property. Certainly the protections of Article 46 are subject to exceptions, contained in the Hague Regulations themselves, in the Article on public order and safety already considered, and in the Articles governing the right of the occupant to requisition. But the exceptions do not permit actions which constitute a complete dispossession of the owner, or the use of the property simply for the benefit of persons other than the owner, or the exploitation of the property for the economy and war effort of the occupant.

The general Article on requisitions, Article 52, permits requisitions only for the needs of the army of occupation, in proportion to the resources of the country; and it is not otherwise permissible within the meaning of the Article for the occupant to utilize the properties of the occupied territories in furtherance of military operations against the occupied country or its allies.

The taking of property which may appear to be correct as a matter of form constitutes nothing other than a requisition, when the elements of force, threat, compulsion, or duress are present in the transfer. It is clear that such taking must be weighed according to the limitations of Article 52, and payment of full value or consideration does not legalize seizure or transfer which is not permissible in the first instance.

Thus, in the Krupp case, where the Krupp enterprise seized and sought to compel the sale of a French-owned machine, then being used by Krupp in furtherance of German war production, the Tribunal found a crime against property, in violation of Articles 52 and 46. In the Flick case, where the defendant took over and operated, with the intent to permanently retain, properties which

* Ibid., p. 31.

had been seized by the Reich, originally under a justified need to preserve public order and safety, the Tribunal held Friedrich Flick guilty of war crimes. When the I. G. Farbenindustrie [A.G.] organized a company, Francolor, to take over the assets of the individual enterprises composing the French chemical industry and when they forced the French representatives to make "an adjustment to the new conditions," the Tribunal adjudged several defendants participating in the negotiations or informed thereof to be guilty of a completed spoliation transaction.

5. Public property.—The principal provisions of the Hague Regulations dealing specifically with public property are Articles 53 and 55. Article 53 entitles the occupant to seize such goods as "cash" and "realizable securities" belonging to the enemy state, and also all movable public property which may be used for military operations. Article 55 entitles the occupying state to administer "public buildings, real estate, forests, and agricultural estates belonging to the hostile state, and situated in the occupied country." The occupying authorities must safeguard the capital of these properties and administer them in accordance with the rules of usufruct.

These articles of the Hague Regulations do not specifically refer to industrial property owned by the state or to mines and mineral reserves publicly owned. No single one of the Hague Regulations is exactly in point. But it seems clear that the restrictions to be applied with respect to the administration and use of such industrial property are not less than the restrictions applicable to public buildings, forests, and agricultural lands belonging to the occupied state.

JUDGE MAGUIRE: Mr. Rockler, before you proceed, at this stage of the proceeding let's assume that the belligerent occupant takes possession of a state-owned forest. Would it have the right to cut or use any of the timber in that forest for either military or other purposes?

MR. ROCKLER: Yes, Your Honor.

JUDGE MAGUIRE: Now, would that same thing follow with regard to coal or ore mines?

MR. ROCKLER: Yes, Your Honor, but I think I ought to point out the limitations upon such use.

JUDGE MAGUIRE: Well, we want to get your views on that.

MR. ROCKLER: If the property were a public mine, say a coal mine in Russia, I believe the occupant would be entitled to take such coal as was necessary for the uses of the army of occupation. I think it would not be entitled to take anything beyond the needs of the army of occupation. I think it would not be entitled to

operate the coal mine in such a way as to impair the capital stock of that mine or to damage the equipment of that mine. I think its interest would be that of a conservator.

JUDGE MAGUIRE: Of course, whenever you take a ton of coal out of a mine, you, to that extent, impair the capital of the mine.

MR. ROCKLER: Yes, Your Honor, but tons of coal may be removed in a conservative way, and I believe it is possible in a coal mine to exploit it beyond reason.

JUDGE MAGUIRE: Well, let's put this situation—You have admitted that for the purposes of the army of occupation—and which, I take it, would likewise include the matter of civilan administration of the occupied territory—

MR. ROCKLER: Yes, Your Honor—

JUDGE MAGUIRE: —that that may be used, and properly used, for that purpose. Suppose that, as the line of fighting progresses into the occupied territories, it is necessary or advisable, or expedient at least, to use that coal or that wood for the purpose of carrying on that war. Is there any limitation on that?

MR. ROCKLER: Yes, Your Honor. I believe that the occupant in regard to public or private property has no right to use the resources and the properties of the enemy state in order to continue the waging of war against that state. I don't think that anything in the Hague Convention gives that right and I think that the rights of the occupant are determined by the permissions which are given to it by the Hague regulations.

JUDGE MAGUIRE: What about the ordinary economy of the occupied territory? The civilian population must have employment; it must have its factories running; its homes must be heated.

MR. ROCKLER: That is right; but I think that is an entirely different case than taking the coal from central Russia and removing it to Germany. I think insofar as the occupant takes—

JUDGE POWERS, presiding: Stick to the question. The question was whether they could use it for any other purpose except to serve the needs of the army. You said they couldn't.

MR. ROCKLER: No. If that is what my statement meant, that is not what I intended. I mean that the occupant for its own purposes cannot use the property for more than its army of occupation. However, it is perfectly clear and in fact it would be the duty on the part of the occupant to utilize such natural resources as coal for the benefit of the occupied people. I think that is implied by Article 43.

JUDGE POWERS, presiding: And that includes operating its factories and its industrial enterprises?

MR. ROCKLER: Yes, Your Honor. But for those purposes and those purposes only.

JUDGE POWERS, presiding: Well, it doesn't become bad, though, just because the occupying power may borrow some of the product of the factory.

MR. ROCKLER: When it, itself, operates them and determines the terms of the contract I think that a contract like that has to be scrutinized very, very carefully.

JUDGE POWERS, presiding: Well, you don't deny the right of the occupying power to purchase and acquire the fruits of the local industry or the local mines. What you say, as I understand your position, is that that kind of a transaction, where the purchaser is likewise the seller, is subject to scrutiny.

MR. ROCKLER: More than that. If the occupant operating a Russian coal mine, for example, sells its Russian coal, I think that there's got to be something shown that real value was given and not a claim presented on paper to the people who would be entitled to derive value in turn.

JUDGE POWERS, presiding: I see.

MR. ROCKLER: I think that you would get pretty close to a clearing account situation if the claim were put down strictly on paper. That would be one way of vitiating the provisions of the Hague Convention.

JUDGE POWERS, presiding: You may proceed, Mr. Rockler.

MR. ROCKLER: In any event, the use of public properties must be limited to the needs of the occupation and be in proportion to the resources of the country. This follows from the judgment of the International Military Tribunal. In view of the importance of public industrial property to the economy of a country, the application of the general standard to such property is supported by more impelling considerations than its application to other state-owned property, and is supported by considerations equally as persuasive as in the case of private property. This is merely to say that the economic utility of a state-owned steel mill is more like that of a private-owned steel mill than of a state-owned park. We submit that the Hague Convention, in its fundamental principles, was not designed to favor a particular system of property, but to limit the use of the occupied territories to the requirements of occupation itself.

If the southeastern section of the United States, containing the public corporation Tennessee Valley Authority [TVA], were to be occupied by enemy forces, while the occupant could seize and operate the plants and enterprises of TVA, it cannot be seriously argued that the occupant would be entitled to shut off all electric power to rural and municipal areas and to convert the TVA into

a power plant for munitions or related industries to be utilized in pressing the war against the remainder of the United States or its Allies.

We think that it is clear from the judgment of the International Military Tribunal that war crimes and crimes against humanity may exist where public property is exploited beyond the general limitations of the laws and customs of war. As Charles Cheney Hyde has put it, in discussing Article 55*—

> "In whatever it does, the occupant should be regarded as the temporary controller rather than as the sovereign of, or the successor to the sovereign of, the area concerned. * * * As such controller, it is highly unreasonable that the occupant should endeavor to enrich itself at the expense of the area concerned."

Only this difference is recognizable in the rights of the occupant when dealing with public property as compared to private property—that the occupant may exercise and, indeed, is probably compelled by the requirements of public order and safety to exercise a *conservatory* administration of public properties, whereas special justification is required for seizing and managing private property altogether.

The question of public property in Case 11 arises almost entirely out of the conduct of the defendants in exploiting Russian industries and resources. Abundant evidence which has been introduced in this case has demonstrated that the basic decrees and regulations pursuant to which the German authorities seized and operated Russian properties called for the unrestricted exploitation of such properties for German war production. This objective was one of the underlying reasons for the very invasion of Russia. The German decrees emphasized that the occupying authorities would, on principle, disregard the needs of the inhabitants and the limits of the resources of the country. Furthermore, these same directives emphasized the title of the Reich to all public industrial property in Russia and the complete power of disposition as well as use of such property. All of this was clearly understood, and even promulgated by the defendants themselves in some cases. The "monopoly companies" or "sponsor firms" which took over Russian enterprises recognized, in the trust agreement itself, that they were acting for the Reich as "owner." It seems perfectly clear that an intention to permanently acquire was present and that the intention was completely inconsistent with the obligation of the occupying power, or its agents, to administer public property only as a usufructuary within the general limitations governing belligerent occupation.

* Hyde, Charles C., International Law, volume III, 2d Revised Edition (Little, Brown and Company, Boston, 1945), paragraph 696 A.

JUDGE MAGUIRE: Now that is the same point, Counsel. Let's assume this situation. There are two factories, we will say, in Poland or Russia, one of which had been dismantled by the retreating forces, or destroyed by the retreating national forces; the other, the machinery was there but the building was damaged. Would the occupying power have the right, without violation of the Hague Conventions or rules, to take the machinery which was in the factory whose structure was damaged and install it in the factory whose structure was undamaged but from which the machinery had been taken?

MR. ROCKLER: Your Honor, this relates to two factories, both of which are public property?

JUDGE MAGUIRE: Oh yes.

MR. ROCKLER: I think the answer to that is that the occupying power would be entitled to move the machinery from one plant to the other.

JUDGE MAGUIRE: Now, let's take this. One is a public factory and one is a private factory, and you have a population which has suffered from the ravages of war and it is necessary that its economy be conducted so that there be some support, employment, and so forth. In that case, would the occupying power be guilty of a violation of any doctrine of international law if it took the undamaged machinery from the private factory and put it in the empty but undamaged building of the government factory and operated it?

MR. ROCKLER: Your Honor, I believe the answer to that is, under the assumptions which you have made, it could be done, but the occupying authority would be bound to compensate the private owner in full.

JUDGE MAGUIRE: Well, but when?

MR. ROCKLER: At the time, or in some guaranteed fashion where you could be sure that the claim was not strictly a paper claim.

JUDGE POWERS, presiding: Supposing the private owner had abandoned the property and hit for the timber and couldn't be located?

MR. ROCKLER: Well, I think these are pretty largely factual questions, Your Honor, and one of the questions would be, why did he abandon the property?

JUDGE POWERS, presiding: I am assuming the fact; I am asking you for the answer.

MR. ROCKLER: I think the occupant would have the right to administer these properties, but I would like to say again, in answer to all of these questions, the administration in the shifting of properties takes place on the assumption (1) that it is done to

maintain public order and safety in the local economy, and that (2) thereafter the plants are not used strictly to benefit the occupant, they are not used to further German war aims, they are not used to exploit the occupied economy beyond the limitations of the conventions. Now, with those limitations—and they are serious limitations—I think the shifting could be done. I may say I do not think any factual situation in this case would meet those requirements.

JUDGE MAGUIRE: We were not trying to ask you to stipulate yourself out of court.

MR. ROCKLER: Yes.

6. Responsibility.—Under paragraph 2 of Article II of Control Council Law No. 10, to establish the responsibility of a defendant for acts of spoliation, it is not necessary to prove that he personally conceived and executed an entire program or transaction. Guilt is established, under the Article, if it is shown, for example, that the defendant was connected with plans and enterprises involving the commission of crimes covered by count six, or was a member of any organization or group connected with the commission of such crime. However, in almost all instances these defendants have been indicted for their own personal activities—for the decrees and orders they issued, for the policies they set, for the advice they offered, for the "contracts" they signed, for the "negotiations" they conducted, for the letters they wrote, and for the monies they appropriated—in furtherance of spoliation transactions and programs.

The principle of individual responsibility for international crimes is firmly established. And the judgments in the Flick, Farben, and Krupp cases leave no doubt that there is no special immunity for so-called private businessmen.

Furthermore, it is no defense that the acts of the individual defendant were committed within the framework of governmental plans. In some cases that is the gist of the crime, where the program of the Nazi State and Party was obviously criminal. As the Krupp Tribunal observed*—

> "The defendants cannot as a legal proposition successfully contend that, since the acts of spoliation of which they are charged were authorized and actively supported by certain German governmental and military agencies or persons, they escape liability for such acts. It is a general principle of criminal law that encouragement and support received from wrongdoers is not excusable."

Nor are these defendants entitled to argue that ignorance of the specific requirements of international law relieves them of

* United States *vs.* Alfried Krupp, et al., Case 10, judgment, volume IX, this series.

criminal responsibility. It is necessary only to establish that the defendant intended what his conduct did accomplish; he need not have been aware that his acts constituted crimes as a conclusion of fact and law. Again, as the Krupp Tribunal stated:[1]

> "* * * when a person acting without justification or excuse commits an act prohibited as a crime, his intention to commit the act constitutes the criminal intent."

It has been suggested that persons who participated as brokers or agents in the transfers of spoliated property are immune from an assessment of guilt. But it seems clear that a thief does not gain immunity for his actions merely because he only received a commission for his efforts instead of the proceeds of the entire theft. Conversely, receipt of the proceeds without participation in the theft is also not innocent. Knowledge of the character of the original acquisition or conversion is a sufficient basis to hold defendants responsible for their subsequent participation. The category of criminals known as accessories after the fact is recognized in probably every criminal code in the world.

As Tribunal II in Case 4 stated:[2]

> "The fact that Pohl himself did not actually transport the stolen goods to the Reich or did not himself remove the teeth of the dead inmates, does not exculpate him. This was a broad criminal program * * * and Pohl's part was to conserve and account for the loot. Having knowledge of the illegal purposes of the action * * * his active participation even in the after-phases of the action make him *particeps criminis* in the whole affair."

The same principle has been applied in the Flick, Farben, and Krupp cases, where defendants received and managed illegally acquired properties.

7. Military necessity.—Several counsel for the defense have argued that since it is permitted to destroy private property in the course of war operations, it must be legal to utilize property in occupied territories as needed in the waging of war. Sometimes the same doctrine is phrased in terms of the requirements of "total war" which, it is alleged, was a brutal invention of Anglo-Saxon countries. That is to say, the broad character of war in modern times requires that all restrictions of law be waived at the convenience of the belligerent.

It is almost enough, by way of reply, to simply state the contentions, and we do not think that we are distorting the essential

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[1] Ibid.

[2] United States *vs.* Oswald Pohl, et al., Case 4, judgment, Volume V, this series.

argument at all. But it may be pointed out that many of the programs and transactions involved in Case 11 hardly classify as military necessities under even the most extreme conception of that term. This may be said for most of the Aryanization and interlacing business carried out by Rasche, and also, generally, for the programs directed toward permanent German domination of the European economy *after* the successful conclusion of the war.

When these arguments of military necessity were made before the International Military Tribunal, as before every other Tribunal convened in Nuernberg, the International Military Tribunal not only flatly rejected them, but quite properly pointed out that the crimes themselves arose out of the Nazi conception that "the moral ideas underlying the conventions which seek to make war more humane" were no longer valid.

A variation in the argument states that atomic bombs are used today and unrestricted submarine warfare is no longer forbidden; therefore it follows that the laws of belligerent occupation no longer exist. As the Farben Tribunal pointed out, if uncertainties and changes have developed in the laws which govern phases of waging war, this in no way forces the "conclusion that the provisions of the Hague Regulations, protecting rights of public and private property, may be ignored." The very purpose of the Hague Convention was to set standards regulating belligerent occupation. To accept the contentions of the defense would leave us with no law at all.

In the Krupp case, the defense of military necessity in modern total war was briefly dismissed with the observation that the conditions and necessities of a war cannot possibly excuse violations of the laws of war, since the laws of war are designed precisely for the conditions and necessities of war.

8. The damages standard.—The argument has been advanced that since certain properties, perhaps wrongfully seized, were returned to their true owners at the end of the war, no loss was really suffered and no crime should be found. Another form of this argument states that where substantial value was given for seized properties no crime can be found in law. In this connection defense counsel have introduced evidence to show that the properties were actually improved, or as an excuse for illegal activities, in some cases where the removal of machinery and equipment is charged, evidence has been offered purporting to show that other machinery and investments were put into the plant.

In the view of the prosecution, all of these contentions are beside the point. If the taking or the operation of plants was

illegal, the question of damages is completely irrelevant. "Damage" is a concept which is pertinent to civil actions, and to civil actions only. Thus, where Cellini steals a bar of gold and fashions an elegant salt shaker from the gold, the owner, having regained the gold as improved by Cellini's artistry, might have considerable difficulty in recovering damages. But in a criminal case Cellini would have no argument whatsoever.

Equally, where machinery was removed from seized plants, whether public or private plants, the defendants responsible cannot be heard to say that they had added to the value of the plant otherwise. For, whether dealing with public or private property, at most the defendants could have only the right of an administrator or usufructuary. This does not give the authority to dispose of the capital stock and equipment of the enterprise in any fashion inconsistent with that limited right.

The decided cases repudiate this suggested relative value test for the commission of a crime. In the words of the Roechling decision*—

> "* * * it is equally vain that Hermann Roechling maintains that he had invested large sums in these plants, while in fact, even admitting that this should be the case, it would in no way modify the responsibility of the defendant, since expenses incurred for an object obtained by means of a criminal act or offense do not eliminate the fraudulent character of such a possession."

Parenthetically, we may note that the affirmative proof offered by the defense to establish this "justification" has generally consisted of an affidavit by friends or associates of the defendant, asserting that value was put into plants over all. Even where concrete figures are introduced, they are meaningless unless weighed with regard to changing price levels and economic values and with regard to the availability of the individual kind of machine or other equipment.

JUDGE POWERS, presiding: Well, if I understand you correctly, then, spoliation may consist in improving the value of property?

MR. ROCKLER: No. Not in that fact. Spoliation is not negated by improving the value of the property.

JUDGE POWERS, presiding: Well, you said if they put out one piece of machinery and put in a better one it would still be spoliation.

MR. ROCKLER: It is not because they put in the better one, but because they took out the first one, Your Honor.

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* See appendix B.

JUDGE POWERS, presiding: The total process amounts to spoliation?

MR. ROCKLER: Yes, Your Honor. I think that the occupant has no right to shift machines around at will.

JUDGE POWERS, presiding: I just wanted to know.

MR. ROCKLER: I don't think he is in a position to decide what kind of capital should be maintained at the plant. I think his obligation is merely to maintain it.

JUDGE MAGUIRE: Well, let me put this question to you, Counsel. Suppose that he is lawfully in possession of a plant as an occupant belligerent, and he finds that in order to economically and efficiently operate the plant for the good, not only of his belligerent rights, but for the benefit of the economy of the country, he takes out an out-moded and inefficient machine and junks it or sells it, or does something else and puts in a new and more efficient machine—would that, under those circumstances, be looked upon as spoliation?

MR. ROCKLER: Your Honor, under those circumstances, you have convinced me, I don't think that in a case like that you could find spoliation, but I am speaking more generally about the kind of fact situations which are involved in this case. I think what I have to say next will indicate the circumstances to which I have been referring.

Moreover, we submit as a factual matter that the very fact, if established, that the defendant added to the capital of the seized plants tends very strongly, in this case, to establish (1) that he intended permanently to acquire the enterprise, in derogation of the rights of the true owner, and (2) that he was utilizing the plants for war purposes, beyond the needs of the army of occupation. It is difficult, in the light of all the evidence, to visualize Pleiger putting funds or equipment into Polish iron mines in order to enrich the Polish owner, or in order to improve economic conditions for the Polish civilian population.

Mr. Caming will continue for the prosecution.

COUNT SEVEN—WAR CRIMES AND CRIMES AGAINST HUMANITY, SLAVE LABOR

MR. CAMING: Your Honors.

The charges under count seven involve the criminal conduct which flows from involuntary servitude imposed on a broad scale and from the use of prisoners of war beyond the clear limits imposed by international conventions. Similar charges are more common to the war crimes trials in Nuernberg than any other type of offense, and numerous decisions have discussed the applic-

able law and recounted the bestiality of the widespread crime generally abbreviated merely as "slave labor."

Germany's first offense in this field came in the First World War when Germany deported Belgians to Germany, an act which called forth such an outcry and such general indignation from the civilized world that the then rulers of Germany withdrew from their criminal conduct.* If any substantial number of leading persons in Germany's Third Reich had learned a proper lesson from Germany's first international crime in this field, countless thousands of human beings would still be living and we would be spared the unfortunate necessity of calling Germany's leaders to account by war crimes trials. The law regarding deportation, enslavement, the ill-treatment of foreign labor and concentration camp inmates, the ill-treatment of prisoners of war, and related matters needs no emphasis by general recapitulation here.

JUDGE POWERS, presiding: Well, I am sorry, but it does, so far as I am concerned.

MR. CAMING: Yes, Your Honor?

JUDGE POWERS, presiding: What is the basis of the claim that the use of concentration camp laborers came about in violation of Control Law No. 10?

MR. CAMING: If you will excuse me a minute, Your Honor, I would like to consult counsel on that.

MR. SPRECHER: Judge Powers, the basis of the law concerning the use of concentration camp laborers is the same as the law regarding any other kind of a person who is covered by belligerent occupation. I don't understand to what your question is directed because—

JUDGE POWERS, presiding: Well, to what counsel said, concentration camp labor. I understand that if a person is deported from a belligerently occupied country to Germany for the purpose of labor, that is a clear violation of the Hague Convention. But if a citizen of Germany, committed to a concentration camp in Germany, is used for the purpose of manufacturing any sort of products needed in war, I don't see where the crime is. Certainly a state has a right to conscript its citizens for labor just as well as it has to fight. If they are German people, whether they are inside the prison or outside of it, what difference does it make?

MR. SPRECHER: Judge Powers, I am unable to see just to what you are directing your question, because the words we used were "concentration camp inmates."

JUDGE POWERS, presiding: That is it.

MR. SPRECHER: And we have not gone into any detail as yet of the limitations with respect—

* See Hackworth, Green H., Digest of International Law (United States Government Printing Office, Washington, 1943), page 399.

JUDGE POWERS, presiding: You are making the claim that because they are inmates of a concentration camp their use in labor is unlawful, and it is to that that my question is directed. If you aren't prepared to answer it, I would appreciate it, though, if, before we finish the thing, I might get a little light on that subject. I am a little confused.

MR. SPRECHER: Judge Powers, in view of the discussion which follows, I think we may be of some help. But if you are in any doubt as to whether or not we have properly clarified our position, we would like to have you request us to furnish a memorandum to clear that point.

JUDGE POWERS, presiding: Very well, you may proceed.

JUDGE MAGUIRE: Before we go ahead with that, I think perhaps we, or at least I, misread that statement. It is the ill-treatment of foreign and concentration camp inmates, not the employment.

MR. CAMING: Yes, I was going to just mention that, Your Honor, that as far as the particular—

JUDGE POWERS, presiding: Well, you mentioned slave laborers, and I was thinking about slave laborers, so-called.

MR. CAMING: If I may continue?

We have charged that the offenses connected with slave labor run from the period March 1938 through May 1945. Our view of the international law applicable to the occupation of Austria and Czechoslovakia has been summarized earlier in our discussion of the law applicable to plunder and spoliation. If the criminal conduct regarding the enslavement of persons before 1 September 1939 is not found by the Tribunal to be war crimes, then this criminal conduct still falls within the category of crimes against humanity.

Some of the defendants charged under count seven participated directly in ordering and directing criminal acts involving the entire slave-labor program; others engaged in the execution and application of the slave-labor program to particular areas and particular industries. At the least, each of the defendants was an accessory to, took a consenting part in, was connected with plans and enterprises involving, or was a member of an organization or group connected with the criminal slave-labor program. In the individual briefs we have set forth the responsibilities which each of the individual defendants incurred in this field. The fact that individual defendants may not have known of some particular detail in the carrying out of a program which they had initiated, supported, or approved is unimportant. No person could know all the detailed ramifications of the execution of all adopted programs. But where, as in the activities here involved, the execution of the specific programs extended over a relatively

long period of time, those who are responsible for initiating, approving, or carrying them out cannot claim that they did not know and are not responsible for what was happening during their execution.

COUNT EIGHT—MEMBERSHIP IN CRIMINAL ORGANIZATIONS

The indictment charges various defendants with membership in organizations declared to be criminal by the IMT, for example: the SS, the SD, and the Leadership Corps.

As to the SS, it has been contended on behalf of all the defendants charged, except Berger and Schellenberg, as a matter of law, that membership in a criminal organization does not apply to so-called honorary SS leaders. Such argument, in addition to the legal concept of criminal membership in the SS, specifically as it has been interpreted by the IMT, by other military tribunals, and particularly in the decisions of the denazification courts throughout Germany, is treated at length in the prosecution's briefs entitled, "Circle of Friends" and "Honorary Membership in the SS." The factual basis for the charges contained in count eight of the indictment—the voluntary character of defendants' membership in the SS and their knowledge of SS activities—is left to the individual briefs on the defendants.

The IMT does not in any way exempt the so-called honorary SS leaders from the categories of criminal membership in the SS. Such membership in the SS is based on two main elements—

(*a*) To be officially accepted as a member in the SS and to remain therein until a time later than 1 September 1939, while the act of joining must not be due to compulsion by the state.

(*b*) Knowledge of the criminal activities in which the SS was engaged.

All of the 14 defendants charged with membership in the SS joined voluntarily, since all enlistments into the SS were voluntary until 1940. These defendants possess all the requirements of guilt set forth in the IMT judgment.* The evidence adduced in support of the other charges of the indictment overwhelmingly establishes knowledge of and participation in the criminal activities of the SS.

Only the defendant Schellenberg is charged with membership in the SD. The SD and the Gestapo were component parts of the RSHA, one of the twelve main departments of the SS. In dealing with the SD, the IMT included members of Offices III, VI, and VII of the RSHA and all other members of the SD, including all

* Trial of the Major War Criminals, op. cit. supra, volume I, page 273.

local representatives and agents, honorary or otherwise, whether they were technically members of the SS or not, to be criminally responsible.[1] Schellenberg was chief of Office VI. His guilt is established.

In the case of the Leadership Corps of the Nazi Party, criminal membership was declared to depend upon the position or rank held by the accused.[2] The defendants so charged were members of the Leadership Corps in categories declared to be criminal by the IMT. Darre and Dietrich were Reich leaders [Reichsleiter]; Bohle was a Gauleiter; and, Keppler was a Hauptamtsleiter (Main Office Chief). These ranks were included in the positions enumerated by the IMT as bearing criminal responsibility. The further requisite of guilt is to have become or remained a member of the organization with knowledge that it was being used for the commission of criminal acts, or to have been personally implicated as a member of the organization in the commission of such crimes. As the IMT said:[3]

> "The basis of this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; the group declared criminal cannot include, therefore, persons who had ceased to hold the positions enumerated in the preceding paragraph prior to 1 September 1939."

These defendants possess all the requirements of guilt set forth in the IMT.

JUDGE POWERS, presiding: Mr. Caming, before you get too far away from that membership—SS membership—you recognize that membership may be forced upon a person under circumstances which would not make them liable?

MR. CAMING: Yes, Your Honor. This is discussed in the brief under the question of involuntary membership.

JUDGE POWERS, presiding: Would that include everybody who did not apply for membership themselves?

MR. CAMING: No, Your Honor. That type of impression into membership would refer to the conscription of members for the SS, such as certain members of the Waffen SS. However, if a man, say, has been asked to join—for example, a Reichsleiter has been asked to join the SS and even deemed it advisable to do so, and then he fills out the necessary application, takes the necessary oath, and pays the necessary membership fees, we consider that he also falls in the category of voluntarily joining the membership.

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[1] Ibid., p. 267.
[2] Ibid., pp. 261–262.
[3] Ibid., p. 262.

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JUDGE POWERS, presiding: Of course, when they send him all of the paraphernalia and he doesn't sign any application at all, and he is under the necessity of either returning it and incurring whatever penalty may result, or accepting it?

MR. CAMING: In that case I would like to consult for one moment.

MR. HARDY: Your Honor, on that point, as you state the facts, it would be my opinion, under your circumstances, that he is not a member at all; however, a man who entered the SS prior to 1940, as stated by the IMT, is. The actual involuntary conscription in the SS did not start until after 1940, and our contention is that a man who joined the SS prior to 1940 possesses the requirements of guilt if he has knowledge of the intent of the organization to which he belonged, and remained a member thereafter.

JUDGE POWERS, presiding: No matter how he got that membership?

MR. HARDY: I think that is a question of particular facts as to that particular defendant, and is one that we would have to deal with separately.

JUDGE POWERS, presiding: The factual situation will be judged individually?

MR. HARDY: That is right, Your Honor.

May it please the Tribunal.

JUDGE POWERS, presiding: Proceed, Mr. Hardy.

MR. HARDY: We will now deal with observations concerning the credibility of defendants and witnesses.

Credibility of Defendants and Witnesses

In the opening statement of this case, the prosecution asserted, "The cancer of the Third Reich, spreading crime throughout the political organism * * * was the suppression of truth. And it is the supernal mendacity of these defendants which is most revolting."

If only the testimony of the defendants in this courtroom were to be considered as a basis for that strong charge, we would not withdraw a letter of it. It has been most apparent throughout the trial that the defendants have not changed character since 1945. This Tribunal has listened to lies, inventions, contradictions, and evasions which would tax the patience of the most credulous. Almost each document of the hundreds introduced into evidence during cross-examination of the defendants marks the spot where a lie was exposed.

This characteristic of the testimony of the defendants became so systematic that fabrications which were purely superfluous were offered. For example, the defendant Kehrl asserted firmly

that he was never aware of the economic persecution of Jews prior to 1936. But Kehrl admitted that he joined the Nazi Party early, that he had read "Mein Kampf," that he read the Party journals, and that he lived in the heart of Germany. Furthermore, he was the economic adviser to the Gau Brandenburg until 1938, and the Gau offices were charged with insuring the execution of the "aryanization" program. Mr. Kehrl is not and was not then an uncomprehending idiot.

Similarly, Puhl, self-proclaimed hero of the resistance, thought that the only defect of the SS was that it was a military organization. Puhl, so he says today, also thought that all inmates of concentration camps were habitual criminals. But elsewhere he has contended that he was diligent in aiding *prospective* concentration camp inmates, who were not at all habitual criminals.

Now, these are the merest examples of gratuitous "explanations" of conduct. We do not mean to suggest, in any way, that the large part of the fabrications presented here were irrelevant. Most pertinent to the defense of "insignificance" put forward on behalf of Lammers was Lammers' own testimony to the effect that he was a chief clerk and notary public of Hitler. However, it appears in the record that Lammers was Chief of the Reich Chancellery, with the highest salary of all German public officials, and that upon the occasion of his sixty-fifth birthday he had received the scarcely trifling bonus of six hundred thousand reichsmarks from Hitler. To paraphrase the remarks of a well known American figure, "Some clerk! Some notary public!"

It was also highly relevant in Ritter's case to deny all knowledge of the Jewish exterminations, as Ritter did. But his own witness, Mackeben, stated in cross-examination (*Tr. p. 11738*) that he had had long discussions with Ritter on that very subject.

Among the other phenomena which appear in the accounts of the defendants themselves are exposures of total amorality. Thus, Pleiger, recounting his exploits in Austria, Czechoslovakia, Poland, Lorraine, and Russia constantly emphasized that the enterprises seized and operated by him were very badly managed by their true owners. To Pleiger, German efficiency—that is, his own efficiency—was a sufficient reason for taking the properties of other persons. Of course, it is quite clear that he nevertheless would have taken and did take over properties which were well managed and in excellent condition, such as the Polish plant Stalowa Wola, or the Czech Witkowitz plants which General Keitel described as the "most modern rolling mill in the world."

Among other attitudes blandly put forth by Pleiger, and shared in their own testimony by other defendants, were attitudes such as these. If German totalitarianism may force the labor of Ger-

mans, what can possibly be wrong with enslaving the populations of other states? Or, if an important and efficient man has several tens of thousands of persons working under him, how can he reasonably be expected to bother about the fact that some hundreds or thousands are concentration camp inmates? As Pleiger stated in reply to the question of why the Hermann Goering Works entered into joint operations with the SS, operations employing hundreds of concentration camp laborers, quoting from his testimony (*Tr. p. 15501*):

"A. If my boss Goering said, 'Settle the matter so that Himmler is satisfied' then I carried out that order. With the best will in the world, you could not have a show-down with the two most powerful men in the Reich; the issue was much too small. * * *

"Q. Let me ask you this: was the employment of several hundred concentration camp inmates a small matter to you?

"A. When the matter was under discussion it was a question of a plant employing two or three hundred prisoners. During the war every woman and every young girl worked. It was not my point of view that prisoners should not work. Let me state that explicitly * * *."

We could multiply such examples several times for Pleiger and then multiply again by the number of defendants in the dock. It would take too long. We only mention these matters because the principal evidence offered in defense has been given by the defendants themselves, and the quality of this testimony is one measure of the defense.

By way of striking contrast, we recall the words of the defendant Bohle, stated in open Court on 23 July 1948, and I quote (*Tr. p. 13531*):

"I think it should be the solemn pledge and foremost duty of every German who held a leading position during the National Socialist regime, to do all in his power to remove from the name of Germany the blot which the deeds of criminal brains have cast upon it. We know that a low estimate of human life and carelessness to human misery is not and never has been a trait of the German character, and for that very reason I think that we should frankly admit the atrocities that have been committed and that have defiled the German name in the world. I do not think that we should attempt to vindicate our own national honor solely by referring to crimes and misdeeds committed by others, some of which are undoubtedly on a par with what national socialism is accused of. I think we should

be too proud for that. And I think—it is my firm conviction that the world will regain its belief in our national honesty only if we ourselves are honest and straightforward in our confessions and thereafter also in our will to make amends. I think we leading men have this responsibility, not only to the victims of these crimes but just as much to the German people, as such, who, with or without our participation, were misled and misguided and are today, without any fault of their own, outlawed in the world. That is what I understand by responsibility beyond that of my own work."

Bohle's view in this respect has been neither shared nor appreciated by his co-defendants, as the proceedings have made clear.

The prosecution does not begrudge the offer of evidence by any person who is informed about the facts, but we would like to point out aspects of what has developed into a mutual insurance society to bring down the responsibility of numerous individuals, both in Nuernberg and in the denazification courts. This condition has come about in the reciprocal exchange of affidavits and testimony.

For example, the affiant von Nostitz gave seven affidavits for von Weizsaecker, one for Woermann, and four for other defendants. In exchange he received one affidavit from von Weizsaecker and one from another defense affiant for his personal use in denazification proceedings. The affiant Bruns, a former servant of the Foreign Office, gave six affidavits for von Weizsaecker and received in exchange one affidavit from von Weizsaecker and at least four more from other von Weizsaecker affiants. The defense affiant Sonnleithner gave four affidavits for von Weizsaecker and received one from von Weizsaecker. Sonnleithner gave four affidavits for Steengracht and received one affidavit in exchange from Steengracht von Moyland. He gave three for Ritter and received one from Ritter. And generally he gave between one and two dozen, as he admitted, to other defense witnesses and received a number in exchange.

JUDGE POWERS, presiding: We will now take a 15–minute recess.

[Recess]

THE MARSHAL: Tribunal IV is now in session.

MR. HARDY: As Steengracht von Moyland's affiant, Mirbach, has explained, he felt that such kind of help was a duty among former Foreign Office colleagues. It has been apparent throughout the trial that most of the witnesses brought by the defense felt or were persuaded that they were members of a "community of interest" to which the defendants also belonged.

This was not only true for the Foreign Office. To illustrate, Kehrl brought as principal witnesses or affiants, his Economics Ministry assistant, Koester, and his assistants in the Ostfaser enterprises. Rasche offered a good part of the personnel of the Dresdner Bank, particularly persons such as Ansmann and Rinn, who had been implicated directly in spoliation activities. Such persons were bound to make self-serving statements, and they did so in total disregard of the truth. Similarly, the defendants have displayed a generous spirit of cooperation. Stuckart, now as a legal expert, has written a memorandum on behalf of Koerner, Pleiger, Rasche, and Kehrl wherein he assures the Tribunal that the occupation of Bohemia and Moravia was entirely justified in international law and recommends that the Tribunal dismiss charges based upon conduct in that area. In the same way, the services of Puhl, as a financial expert, have been commandeered by several of the other defendants.

Fabrications, lies, inventions, contradictions, and "explanations" were rampant in the Commission hearings. One illustration may demonstrate the value of statements of defense affiants. Altenburg, of the Foreign Office, gave five affidavits for von Weizsaecker, one for Steengracht von Moyland, one for Keppler, one for Veesenmayer, and one for Bohle, all listing his correct present address. On cross-examination before the Commission, he was asked whether he had testified concerning his personal involvement in Jewish persecutions during his denazification trial. He naturally answered in the affirmative. But the denazification files used on cross-examination show that the court was not at all aware of Altenburg's anti-Jewish activities, because this witness had used another address for the denazification proceedings in order to prevent the discovery of damning evidence.

We will not even discuss here the value of character evidence which has been offered, consisting of personality estimates of the defendants by such reputable citizens as Oswald Pohl, Otto Ohlendorf, and Leo Volk of the SS and SD, and of other distinguished gentlemen such as Otto Abetz, Werner Best, Erhard Milch, and Franz Schlegelberger, who were high in the Nazi hierarchy.

One other peculiarity of the testimony heard here deserves special mention. It is not strange that the defendants could not recall activities charged against them when such activities occurred 6, or 8, or 10 years ago. However, it is unusual that they invariably were able to remember the exact numbers and names of persecutees whom they aided and even the precise devices by which aid was given. Most astounding is the miracle which took place when the defendants had been given documents to refresh

recollection concerning criminal transactions. Not only were they instantly able to recall where the secretary erred at crucial points in the transcription, but, wherever necessary, they were readily able to explain how the printed word meant its exact contrary. In this fashion, Rasche, confronted with the Dresdner Bank Vorstand minutes of 2 October 1941, which observed that a "nonguaranteed" credit of twenty million had been granted to Ostfaser, stated that the minutes were "not quite correct * * * the Reich was liable." Presented thereafter by his own counsel with the record of a conference between Dresdner representatives and Reich authorities, where the Reich officials flatly rejected any liability, he observed that "The legal opinion expressed is erroneous * * *." In the same way, Kehrl, having denied "competence" in banking affairs in the "Protectorate," contended that a document stating that he would have a "decisive voice" in such affairs should more accurately be translated as stating that he would have a "decisive part." Quoting from his testimony (*Tr. p. 16916*):

> "Q. * * * put it the other way around and I still want to ask you what you think it means?
>
> "A. It meant that I was *not* the decisive factor—that I was one of several decisive factors. That is what the document says * * *."

To sum up this section on the reliability of defense testimony and evidence, we will repeat what we consider, in a most *charitable* view, to have been the attitude typical of the defendants and their witnesses when they were speaking under oath. Koerner candidly stated and I quote (*Tr. p. 14717*):

> "* * * I was a witness on behalf of Goering and I had to take certain considerations into account in behalf of my old chief. I didn't defend him, but I gave certain statements which I believed were capable of exonerating him so far as I was able to exonerate him. That is the way we have to look at these things * * *. I would never have incriminated a man who was still alive at the time."

Mr. Sprecher will now conclude the final argument for the prosecution.

JUDGE POWERS, presiding: Mr. Sprecher?

MR. SPRECHER: Your Honors, firstly, before I go forward, our closing statement is the statement as read and not the draft which we have circulated. We have made some alterations in the last several days, and the draft was largely to help with the punctuation and to give you the citations.

JUDGE POWERS, presiding: Well, will we be supplied with a revised draft?

MR. SPRECHER: Judge Powers, you will get the transcript, or if you like we can file an errata sheet to the unofficial draft, but, of course, the transcript will be the closing statement—the official closing statement.

JUDGE POWERS, presiding: Very well.

DR. BECKER: Perhaps I may make the request that we, too, be given the errata sheet so that we need not wait for the transcript, which is always far behind.

JUDGE POWERS, presiding: Well, if one is prepared, I assume it will be furnished to defense counsel too.

MR. SPRECHER: Well, sir, the prosecution does not make the German copy of the closing statement; that's merely translated by the interpreting staff beforehand for their own use, so as to assure a clear translation in Court, but there is no draft statement in German of the final statement made.

JUDGE CHRISTIANSON: Well, there's not a wide variation, is there, between your copy and your actual read statement? I followed it quite closely, there is no wide variation.

MR. SPRECHER: No, there is no wide variation, sir, in most cases.

JUDGE POWERS, presiding: The variation is in the part you haven't yet delivered. Is that it?

MR. SPRECHER: No, no, sir; there is no variation in the part yet to be read.

JUDGE POWERS, presiding: Well, I misunderstood you. Well, if you do prepare an errata sheet see that defense counsel receive a copy of it.

MR. SPRECHER: Yes, Your Honor.

Superior Orders, the Defense of Alleged Duress, and the Mitigation of Punishment for Crime

Control Council Law No. 10, like the London Charter, provides that a superior order does not free an accused from individual responsibility for crime, but that a superior order "may be considered in mitigation." The record before you contains a reservoir of proof on the ramifications of individual responsibility for crime which was not present with such force or detail in the record before the International Military Tribunal. Yet the conduct alleged as criminal in the case here is identical with, runs parallel to, or derives directly from the criminal conduct analyzed by the International Military Tribunal. Hence, it is particularly appropriate to refer this Tribunal to the classic statement of the IMT on the general subject of individual criminal responsibility.

This classic statement concludes with the following much quoted sentence:[1]

> "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."

Particularly in war crimes cases, the law on superior orders cannot properly be separated very far from a consideration of the defense of duress or coercion—and ordinarily the judgments have discussed these two questions as closely related matters.

In Case 3 before Tribunal III, the so-called Justice case, the Tribunal found no circumstances or reasons which warranted any variation in or reformulation of the law on this point as defined by the IMT. In its judgment at pages 10759 and 10760 of the transcript, Tribunal III quoted the same provisions from the IMT judgment which we have just referred to.[2] The Tribunal in that case was also faced with special type of defense claim to immunity, namely, that "judges are entitled to the benefit of the Anglo-American doctrine of judicial immunity." In rejecting this particular brand of alleged immunity, Tribunal III declared the following at page 10703 of the transcript:[3]

> "In view of the conclusive proof of the sinister influences which were in constant interplay between Hitler, his Ministers, the Ministry of Justice, the Party, the Gestapo, and the courts, we see no merit in the suggestion that Nazi judges are entitled to the benefit of the Anglo-American doctrine of judicial immunity. The doctrine that judges are not personally liable for their judicial actions is based on the concept of an independent judiciary administering impartial justice. Furthermore, it has never prevented the prosecution of a judge for malfeasance in office. If the evidence cited supra does not demonstrate the utter destruction of judicial independence and impartiality, then we 'never writ nor no man ever proved'. The function of the Nazi courts was judicial only in a limited sense. They more closely resembled administrative tribunals acting under directives from above in a quasi-judicial manner."

It will be difficult, it seems to us, for the defense to conjure up here any claims of immunity from criminal responsibility in this case of any greater substance that the ill-founded claim of "judicial immunity" which was made in Case 3.

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[1] Trial of the Major War Criminals, op. cit. supra, volume I, page 223.
[2] United States *vs.* Josef Altstoetter, et al., Case 3, Volume III, this series.
[3] Ibid.

In Case 12 [High Command case], in the judgment recently rendered by Tribunal V, the Tribunal declared that the recognition of the contention of superior orders as a defense would be the recognition of absurdity. After stating that paragraphs 4(*a*) and (*b*) of Article II of Control Council Law No. 10 were "clear and definite" on the subject of superior orders, Tribunal V went on to say:*

"All the defendants in this case held official positions in the armed forces of the Third Reich. Hitler from 1938 on was commander in chief of the armed forces and was the supreme civil and military authority in the Third Reich, whose personal decrees had the force and effect of law. Under such circumstances to recognize as a defense to the crimes set forth in Control Council Law No. 10 that a defendant acted pursuant to the order of his government or of a superior would be in practical effect to say that all the guilt charged in the indictment was the guilt of Hitler alone because he alone possessed the law-making power of the state and the supreme authority to issue civil and military directives. To recognize such a contention would be to recognize an absurdity.

"It is not necessary to support the provision of Control Council Law No. 10, Article II, paragraphs 4(*a*) and (*b*), by reason, for we are bound by it as one of the basic authorities under which we function as a judicial Tribunal. Reason is not lacking."

The same Tribunal further stated:

"International common law must be superior to and, where it conflicts with, take precedence over national law or directives issued by any national governmental authority. A directive to violate international criminal common law is therefore void and can afford no protection to one who violates such law in reliance on such a directive.

"The purpose and effect of all law, national or international, is to restrict or channelize the action of the citizen or subject. International law has for its purpose and effect the restricting and channelizing of the action of nations. Since nations are corporate entities, a composite of a multitude of human beings, and since a nation can plan and act only through its agents and representatives, there can be no effective restriction or channelizing of national action except through control of the agents and representatives of the nation, who form its policies and carry them out in action.

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* United States *vs.* Wilhelm von Leeb, et al., Case 12, judgment, volume XI, this series.

"The state being but an inanimate corporate entity or concept, it cannot as such make plans, determine policies, exercise judgment, experience fear, or be restrained or deterred from action except through its animate agents and representatives. It would be an utter disregard of reality and but legal shadowboxing to say that only the state, the inanimate entity, can have guilt, and that no guilt can be attributed to its animate agents who devise and execute its policies. Nor can it be permitted even in a dictatorship that the dictator, absolute though he may be, shall be the scapegoat on whom the sins of all his governmental and military subordinates are wished; and that, when he is driven into a bunker and presumably destroyed, all the sins and guilt of his subordinates shall be considered to have been destroyed with him.

"The defendants in this case who received obviously criminal orders were placed in a difficult position but servile compliance with orders clearly criminal for fear of some disadvantage or some punishment not immediately threatened cannot be recognized as a defense. To establish the defense of coercion or necessity in the face of danger there must be a showing of circumstances such that a reasonable man would apprehend that he was in such imminent physical peril as to deprive him of freedom to choose the right and refrain from the wrong. No such situation has been shown in this case."

Thus, the Tribunal connected up the whole problem of superior orders to a discussion of the requirements for establishing "the defense of coercion or necessity." Now, if there was no "imminent physical peril" to the military commanders which established any "defense of coercion or necessity in the face of danger," it is difficult to imagine what grounds the defendants in the dock here can assert which puts them in a better position.

In all of the cases tried in Nuernberg the defense in one way or another has sought reliance upon superior orders and upon the defense of necessity or coercion. Almost all the judgments discuss the law on these points. Perhaps in the three trials against persons who were principally private industrialists, the Flick, Farben, and Krupp cases, the defense labored longest in attempting to make out a defense of necessity concerning the employment by private industry of large numbers of slave laborers. Although we do not believe that cases involving private industrialists are in point here, with respect to slave labor, we suspect that counsel for certain defendants will cite some of the language in one or the other of these judgments in trying to make a defense of justification in his own case. We believe that there are ample quotations from the legal authorities in the Flick, Farben, and Krupp

judgments. The judgment in the Krupp case, under a long section entitled "Necessity as a Defense," includes extracts from section 52 of the German Criminal Code and a number of references to English and American authorities. We will not repeat these citations here, but we think it important to underline certain fundamental concepts and to note certain elements which must be established by a defendant undertaking the burden of establishing a defense of necessity. Some of these concepts, which are emphasized again and again by the authorities, are the following: the presence of "irresistible force"; a "present danger for life and limb"; a "fear of instant death"; the absence of any opportunity for escape; the imminent injury to the accused must be shown not to be disproportionate to the evil which he furthers under duress.

There is no compulsion, as the concept is used by the authorities, where the alleged coercion was spread out through months and even years. There is no compulsion where the alleged overriding compulsion was a force to which the accused attached his energy for any substantial period of time, even though his attachment was abhorrent to him. There is no irresistible force when the accused, having recognized evil, had any possibility to extract himself from the coercion by some available means even though such means were difficult and highly unpleasant. It is not enough that the injury to the accused or the possible methods of escape from coercion involved his loss of professional standing, his loss of property, a substantial reordering of his life and habits, or even his confinement and the loss of substantial personal liberty. The historic law has recognized no such personal injuries as a justification for committing evil or invading the rights of others. If in war crimes cases the defense of necessity is stretched beyond the clear and definite limits set down by the authorities, then by judicial interpretation superior orders in effect are made a defense, and by judicial interpretation the provisions of the London Charter and Control Council Law No. 10 are in effect voided.

It is really anomalous for these defendants, however, to claim superior orders or some kind of impelling necessity or overriding duress which drove them to the acts for which they are charged here as criminally and individually responsible. In most instances these defendants were not following a specific command as does the soldier. Rather they were following and implementing a great complex of criminal policy under which at one time most of Europe languished. These defendants attached themselves to the making or the execution of these policies with deliberation and over a long, long, period of time. The service they gave the Third Reich during the years of its aggressive expansion required

painstaking effort, proposals and counterproposals, and the writing and consideration of countless memoranda, and the ups and downs of political and economic administration. In a short period of time any one of them could have retired from the limelight of the Nazi stage merely by showing a little less enthusiasm or by making himself a little less indispensable. Of course, such a personal reaction would have meant some reordering of their personal lives, but certainly these men were men of enough ability to win their daily bread without giving such formidable insurance and support as they did give to Hitler's Third Reich. Millions of other Germans made their way through these evil times without sitting in the councils of the mighty, and many Germans refused entanglements of this kind of their own free will. In a dictatorship one does not win or hold great influence and high position by any genuine reluctance or reticence spread over any period of time.

If finally these worthies before us at a given moment did face a demand from which they inwardly revolted because of what moral fiber still remained to them, the demand was a kind of which they had long been forewarned by their prior knowledge of, and their associations with, the policies of Hitler's Third Reich. The early persecutions of the leaders of the Nazi opposition; the Roehm purge; the burning of the synagogues; the cavalier treatment of the independent church leaders; the violence against the leaders of the trade unions and the cooperatives; the shake-up of the High Command before the war; the remilitarization of the Rhine by unilateral action and the violation of treaty; the sudden sweep of the Wehrmacht over Germany's sovereign neighbor, little Austria; the bold threats before Munich, the overrunning of Czechoslovakia when the ink was scarcely dry on the Munich Pact; the concentration camps in Germany which certainly these defendants had ample reason to know would be extended once Germany had its hands on more so-called "inferior peoples"—all these things, and many, many more were signposts enough. They gave warning to many who had less intimate knowledge of the Nazi policy and less access to the inner circles than did these defendants. Germany had become an open stage of violence in both domestic and foreign policy before the first shot was fired in Poland. These men had more access to knowledge of the true state of affairs than did the multitude of Germans or of foreigners. Notwithstanding, these men dedicated years of their lives in loyal and essential service to significant parts of Hitler's program. They continued their essential support, even as the aberrations of the Nazi program grew in intensity and with geometric progression. Why did these men go along with Hitler's

coterie so long? For one or more of a number of reasons. Because they liked and admired Hitler's early "successes." Because Hitler's Reich gave them a chance to see old scores settled by violence where pacific means had failed. Because they liked the power and the prestige which had eluded most of them before they raised their hand publicly in the Hitler salute. Because these men had lost the will to exercise a moral choice long before they felt any compelling inward revolt at the violence of the gang of which they were a part. Because these men identified their will with Hitler's cause. No convincing evidence appears that these defendants showed any real revulsion before they had the peculiar kind of reflection which must have come in the air shelters as the Allied fliers paid back the terror of Rotterdam, the London blitz, and the German dive bombers in Poland. As symbolic of their true attitude during the time when Germany was riding high, we refer to the testimony of the defendant Pleiger, testimony perhaps given with intent of humor, but testimony in fact full of ironic truth. Pleiger testified on his support of the Salzgitter iron ore project, which he admitted all the experts considered uneconomical. Pleiger said (*Tr. p. 15289*) : "I said that I would have made a pact with the devil himself in order to achieve my aim." We think Pleiger unintentionally adverted to the true ethical and moral attitude of most of Germany's recent leaders concerning their respective entanglements with the Nazi program. For one reason or another these defendants made their pact with the devil. There is no convincing evidence that these defendants felt that the consequences of their pact with the devil were really very hard to swallow, at least until near the end. We doubt if they considered any part of these consequences a bitter pill until defeat was imminent or until they foresaw that the world's growing regard for the penal enforcement of international law assured them of an accounting in court. But any qualms they had were too little and too late to effect, much less undo, their criminal responsibility for conduct flowing from their various related unholy alliances and entanglements. It would be somewhat humorous, if it were not so tragic, to ask how many of these defendants would now be charged with malfeasance and disloyalty if Germany had won the recent war. None of them showed outwardly enough reluctance so as to be seriously suspect even in the last hours when Himmler and Goebbels became more and more the main pilots of the dying Third Reich. It is well to recall that even Hermann Goering was interned because he was suspected of some disloyalty to the Fuehrer in those last days. We suggest that the claims of duress by these men will ring like a badly cracked bell in the halls of history—and that these claims

have received less credence among the broad masses of Germans who kept out of the councils of the mighty than these claims have received attention in the courtrooms of Nuernberg.

Unresisting "Resistance"

The defendant von Weizsaecker proposes for the serious consideration of this Tribunal that he was in *bona fide* resistance to Hitler's Third Reich and to its unspeakable evils. He says that he cherished in his heart the final aim of eliminating Hitler and thus destroying the government in which the defendant himself served for twelve long years. If the word resistance can be stretched to cover any of the conduct of Weizsaecker, it can only be described as the most unresisting resistance, a resistance which took no tangible effect, a resistance which prevented none of the crime charged, and a resistance supposedly maintained while the defendant committed overt act after overt act which planned and furthered aggression, and which planned and furthered such vast crimes as the resettlement and ultimate mass extermination of countless defenseless victims in the occupied countries. The testimony of von Weizsaecker's witnesses and dozens of affiants on this point was extremely nebulous and padded with remote hearsay and *ex post facto* wishful thinking. At best it revealed only that von Weizsaecker, like many other persons in the Hitler regime, nurtured no very cordial feelings for some of his colleagues in the Third Reich or for some of their techniques. The maintenance of some professional and social contacts with anti-Nazis, especially during the declining years of the war, does not differentiate von Weizsaecker from other leading officials who tried to take out similar last-minute life insurance when defeat was imminent.

The claim of von Weizsaecker is not entirely novel in Nuernberg, although for some reason it has received an abundance of attention. In the Krupp case the defendant Loeser offered concrete evidence which identified him "with the underground to overthrow Hitler and the Nazi regime." Loeser was "arrested by the Gestapo in connection with the plot of 20 July 1944" and was scheduled for trial. Even real resistance was not found by the Tribunal to be a justification for the crimes in which the defendant Loeser participated, although one of the judges felt that his sentence was too severe in view of his resistance.* The defendant Sievers in Case 1, the Medical case, claimed that he took a high position in the Nazi government "so that he could be close to Himmler and observe his movements" and so he could

* United States *vs.* Alfried Krupp, et al., Case 10, Volume IX, this series. The judgment is reproduced in section XI, and Presiding Judge Anderson's dissent concerning the length of Loeser's sentence is reproduced in section XII, thereof.

"obtain vital information which would hasten the day of the overthrow of the Nazi government." The Tribunal in that case stated with respect to this claimed defense:[1]

> "Assuming all these things to be true, we cannot see how they may be used as a defense for Sievers. The fact remains that murders were committed with cooperation of the Ahnenerbe upon countless thousands of wretched concentration camp inmates who had not the slightest means of resistance. Sievers directed the program by which these murders were committed. It is certainly not the law that a resistance worker can commit no crime, and least of all against the very people he is supposed to be protecting."

There is much opportunity for us to go much further into the typical Nazi double talk which has been conceived here to deceive the unwary. We doubt if any other series of trials have been filled with such circumventions of truth, such fantastic explanations, and such absurd professions as the defendants have proffered in Nuernberg. But, in view of the entire evidence in this case, we think it fitting to conclude the closing statement in this last trial at Nuernberg with the same words with which Mr. Justice Jackson concluded the closing address for the United States of America in the first trial:[2]

> "If you were to say of these men that they are not guilty, it would be as true to say there has been no war, there are no slain, there has been no crime."

C. Extracts from Closing Statement for Defendant von Weizsaecker[3]

DR. BECKER (cocounsel for the defendant von Weizsaecker): Your Honors:

"Diplomats should be sent to the gallows," said a Prussian field marshal named Wrangel almost 90 years ago in a telegram to King Wilhelm, who later became the first German Emperor. The field marshal referred to the diplomats of his own country, and his words reflect the profound indignation of the soldier for the men who are invariably seeking adjustment and compromise instead of bringing about clear-cut decisions. We in Germany are well acquainted with the tension which developed a little later

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[1] United States *vs.* Karl Brandt, et al., Case 1, Volume II, page 263, this series.

[2] Trial of the Major War Criminals, op. cit. supra, volume XIX, page 432.

[3] Complete closing statement is recorded in mimeographed transcipt, 10 and 11 November 1948, pages 27191–27264. The complete opening statement for the defendant von Weizsaecker is reproduced in section V C, Volume XII, this series. Von Weizsaecker's complete personal final statement to the Tribunal is reproduced in section XIV, this volume.

between Prince Bismarck, the founder of the second German Empire, and his diplomats, although he himself had been one of them earlier in his career. And the world knows that President Roosevelt, in selecting his staff, often replaced career diplomats by special envoys drawn from other professions. "The men of the State Department, these career diplomats, * * * half the time I do not know whether to believe them or not." That was his opinion as reported by his son. In essential matters—one is almost tempted to say in the darkest moments of American foreign policy, like the Morgenthau plan and the delimitation of the spheres of interest between Great Britain and Russia in the Balkans—the State Department was bypassed by Roosevelt, according to what Mr. Cordell Hull has told us in his memoirs.[1]

In this trial we have been concerned with the relations between Hitler and the career diplomats. All kinds of witnesses testified on this subject. From Mr. Rauschning, the author of the "Talks with Hitler," down to Paul Schmidt the well known interpreter, all of them gave an unmistakable picture of these relations. Hitler despised the German diplomats, if he did not actually hate them; he did not allow them to exercise even the slightest influence on political decisions, and there was no room for professional diplomacy in his vision of the political future.

After the First World War, President Wilson's idea that there was to be no more secret diplomacy, because it was considered one of the major causes of war, played a special part at Versailles, and the very title chosen by the deputy chief prosecutor[2] for one of the lectures which he delivered in an effort to prepare German public opinion for this trial, *viz,* "the conspiracy of the diplomats," seems to be indicative of anger and suspicion as regards the men whose activities are not carried on in public, whose work is difficult to check and must therefore appear suspicious from the very outset, rather than of the charges preferred against them as so-called war criminals.

Now, what are the reasons underlying this distrust, this dislike of the diplomats, this common anti-diplomatic prejudice which has manifested itself at all times and among all nations? There exists a natural tension between the policy makers who are driven forward by their constructive determination, and the men who consider it their mission in life to seek adjustments between given political realities and the various trends of political regeneration. Adjustment and compromise are the essential elements of the diplomatic profession; the recognition as a matter of principle of

[1] Hull, Cordell, The Memoirs of Cordell Hull (MacMillan Co., New York, 1948), volumes I and II.

[2] Reference is made to Mr. Robert M. W. Kempner.

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equal rights for the other party is the great quality of the diplomat. He is not called upon to make political decisions nor is he supposed to help in the shaping of the political will. He is the man of the compromise solution, whose ultimate aim it must be to prevent political controversies from reaching a stage where they are liable to degenerate into conflicts. Where there is war, there is no longer any room for diplomacy, unless it is aimed at peacemaking. Peace, to the diplomat, is always equivalent to the adjustment of political forces, and never means unconditional surrender. The Congress of Vienna in 1815, where peace was achieved by the diplomats, enabled Europe to enjoy a much longer period of rest than the dictated peace treaties made on later occasions. Nor is there any room for diplomacy where there is world domination. It is the very essence of a diplomat to be anti-imperialistic.

Diplomacy arose in Europe as a profession toward the 16th century when the Christian universalism of the Middle Ages disintegrated. The concept of a society of equal states finds its representative expression in diplomacy. "The establishment of international relations on a basis of reciprocity constitutes today the essential aim of international policy; diplomacy is only the day-to-day application of this principle." That is the definition which was subsequently given by Prince Metternich, who is the classical representative of European diplomacy. This recognition of reciprocity as a matter of principle makes the untiring readiness for compromise the essential element of diplomatic technique. To the diplomat, policy is the art of the possible, and this accounts for his strained relations with modern public opinion and the masses, who passionately clamor for the impossible. The success of diplomatic work very largely depends on the elimination of publicity because the diplomat tends to spare susceptibilities and prefers to produce greater effects by not exposing his partner in negotiations to the humiliations of public utterances and of public acts. But since the activity of the diplomats is concerned with matters of public interest, he soon becomes an object of public distrust, because the public fails to understand how very much diplomacy, with its limitation to the possible and the attainable, actually represents the application of common sense to political developments.

The world normally associates diplomats with well cut suits, cocktail parties, and small talk. I believe that in this trial many a long drawn-out reconstruction of past events has revealed something of the painstaking, meticulous work pursued by the diplomats in their endeavor to avert disaster in our time. Of course, their activity was not spectacular. They rather worked with dis-

cretion, using the whole gamut of diplomatic methods, making influences felt, absorbing and attenuating shocks, giving warnings, advice, and information. The charge put forward by the prosecution against Mr. von Weizsaecker, that he deceived foreign countries precisely by his cautious methods, has been clearly disproved. On the contrary, Mr. von Weizsaecker warned foreign countries when they were still credulous, and attempted to use foreign governments to prevent the Hitler regime from pushing Germany and the world into chaos. That he ultimately failed constitutes no valid reason for accusing him. Is there anyone in the world today who can claim more than that he ardently strove to ward off the disaster of our period? Is there anyone who can say that he actually succeeded in overcoming this evil?

Mr. von Weizsaecker declared on the witness stand (*Tr. p. 8089*)—

> "As a typical mediator, the diplomat necessarily satisfies neither the wishes of his own government nor those of the foreign government."

The work of adjustment and compromise in which they are engaged creates a natural community between the diplomats of the various nations. This, in turn, gives rise to suspicions on the part of the nationalists of all countries. This trial has revealed one thing—there was indeed a conspiracy of the diplomats, but it was an international conspiracy to preserve peace, and Mr. von Weizsaecker played an essential part in this conspiracy. In this conspiracy he used the instruments of the diplomat against the policy of the Hitler government which he realized would hurl Germany and Europe into the abyss. His objective was international and patriotic alike, viz, to safeguard international peace and to give Germany her due place as an equal partner among the nations of the world. He necessarily worked through the instrumentality of the office he held under a government with which he had nothing in common. It was only for the sake of this objective that Mr. von Weizsaecker assumed the office and held it. Innumerable witnesses have testified on this point in the present trial, foreigners and Germans, clergymen and politicians, emigrants and men who remained in Germany, distinguished European names, and unknown collaborators and friends. This is a situation which is perfectly in keeping with the tradition of the diplomatic profession, and Tallyrand—Napoleon's diplomat, who worked against Napoleon and thereby saved France from a catastrophe and Europe from a political void when Napoleon was overthrown —defined it with the following words:

"At all times, there is good to be achieved and evil to be prevented; that is why, if a man loves his country, he can, and in my opinion he must, serve it under all governments which his country may adopt."

Your Honors, it is not because I particularly like to dwell on historical aspects that I have been led to present this short survey of history, but the tradition of diplomacy is essentially a European tradition, and I sometimes felt in the course of this trial that the work of the diplomat—in which a gesture often conveys more than a word, and a personal word more than a document, a document often does not mean what it says but does not mean the contrary either—might be more easily understood if a word or two were added to explain this diplomatic tradition.

And there is one more consideration: the judge is necessarily the representative of the rule of law in its absolute form, while the diplomat stands for the rule of law in its attainable form. To the diplomat, the end does not justify the means, but his profession requires him to wrestle every day with the forces of evil for the preservation of the rule of law, but what he ultimately succeeds in wresting from these evil forces does not necessarily represent the rule of law as such. The judge confronts the world with a demand which he must realize every day anew. He is above the world of evil. The diplomat is engaged in a day-to-day struggle with the world of evil, he is exposed to the evil in his whole person and no defeat should cause him to give up the struggle. It is only by carefully studying all aspects of the tactical situation in each particular case that the judge is able to draw as clear a distinction between the struggle against the evil and the evil itself as this struggle deserves.

This is clearly illustrated by the situation existing on the eve of the war with Poland when, for military reasons, Hitler was able to start this war only if he could do so before a certain definite date. All documents drawn up in these circumstances with a view to delaying the war—be it only for a few weeks—constituted action taken against this war as such, irrespective of whether an individual document used Hitler's own arguments or his anti-Polish language.

Not to have made this attempt would have been equivalent to leaving unused a chance for the prevention of war. I have heard it said that a man who allows himself to become involved in these ever changing tactical developments is thereby himself turned into an instrument of evil. Such reasoning might lead us to brush aside all the efforts made in recent months by American statesmen in order to preserve peace with Russia, with the words: "What

are you waiting for to drop your atom bombs!" In this latter instance, we have been watching a situation in which it was the duty of the diplomats of the Western Powers not to declare: "Here I am, I can go no further;" or "Your speech be, Yes, yes, or no, no," not because they wished to avoid facing the truth, but because the truth, to those who fight for it, is peace.

After all this, it is not difficult to understand why the diplomatic position of a man who was still representing the qualities of diplomatic tradition could become a central position in the fight against Hitler. For his very profession, if he took it seriously, was bound to bring him into opposition against the Hitler regime.

In addition to the diplomatic tradition, there is in Mr. von Weizsaecker's case the tradition of the naval officer, which combines secrecy with an open vision of the wide world and is therefore well suited to diplomacy. This may be the reason why he readily accepted the personal risk which enabled him during his 5–year tenure of office as the State Secretary to carry on an activity which, if it had become known, might have cost him his neck any day. But it is perhaps due to an even greater extent to the third tradition, the Christian tradition of his family, which gave Germany in the 19th century one of her most distinguished professors of theology. On this matter, the testimony of two younger witnesses speaks perhaps a clearer and simpler language than all the bishops and cardinals in their affidavits. There is, in the first place, the diplomat Albrecht von Kessel, who has become known through Allen Welsh Dulles' book "Germany's Underground," in which Kessel's notes are used as source material (*Tr. p. 9451*)[1]—

> "Mr. von Weizsaecker saw 'in Hitler's government and rule * * * an evil power which did not respect decency and morals and which fought against Christianity and humaneness; and these things were the decisive factors in Mr. Weizsaecker's life.' "

Or, as the young German YMCA representative, the Reverend Werner Jentsch, put it[2]—

> "Within the government, von Weizsaecker was the most courageous Christian who continuously intervened on behalf of the church, who indeed took risks which might have cost his neck * * *. During the times of the religious persecution he has shown himself as a true brother in the community of Christ. It is my duty as clergyman and as a brother to make these facts known."

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[1] Complete testimony of von Kessel is recorded in the mimeographed transcript, 21 and 22 June 1948; pages 9448–9524, 9550–9585.

[2] Affidavit of Jentsch (Weizsaecker 423, Weizsaecker Ex. 423).

In its opening statement, the prosecution declared that Mr. von Weizsaecker and five other defendants from the German Foreign Office stood on the top level of the diplomatic roll of dishonor because they had helped to pave the way for the National Socialist aggressions, and furthermore the prosecution said that this trial would furnish complete proof of Mr. von Weizsaecker's energetic and enthusiastic support of Hitler's war policy. (*Tr. p. 33.*) The Primate of the Norwegian Church, Bishop Berggrav, the leader of the Norwegian resistance movement who was himself kept in solitary confinement by the Gestapo for 3 years, and who in spite of his serious heart trouble traveled to Nuernberg, replied to the question of why he had presented himself to this Court as follows:*

> "I did this because of my strong feeling of the duty of helping this Tribunal to create full justice towards this man, and because it is my conviction that he is a man who has always been as much opposed to the Nazi regime as I myself have been, knowing that for him Nazism and our human way of thinking was as different as oil and water, and that never a drop of the Nazi oil entered into his clear water. Especially, I offered to appear before any Tribunal in Weizsaecker's case because I know, from our occupation in Norway, as I have told you, how difficult it is to find out the truth about those people who were in such positions as he held, how difficult that will always be, now and in the future. And as I lately said, according to my conviction, it is necessary not only to have documents and facts in these cases, but to get the picture of the whole personality and character; and I might be one of them in Allied countries who knew this character from, as we say, the inside as well as from the outside. And therefore I found it my duty, according, also, to my passionate love of justice, to appear. I know that Weizsaecker fought to preserve the peace, I know that he remained in office, as I said, in an effort to prevent Nazi excesses and to bring about a just peace. I know further, from my contacts with him and from our communications over the years, that this man served secretly to bring about peace, a peace which he knew could only be accomplished with the elimination of Hitler."

How do we account for this flagrant contradiction between what the prosecution asserted and what the Norwegian bishop stated? The assertions of the prosecution are based on documents; the

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* Testimony of Bishop Eivind Berggrav is recorded in mimeographed transcript, 14 June 1948, pages 8514–8543.

Norwegian bishop has a personal knowledge of the people and events concerned.

Counsel for the defense have attached particular importance to making the language of documents intelligible to the Tribunal and, for this purpose, they have heard a number of witnesses, the first of whom was Professor Dr. Erich Kaufmann.* Owing to his long international experience, he is the greatest authority on international and public law, whom we were able to present to the Tribunal from among the German experts; at the same time, he is also a great expert as regards the administrative practices of government departments as well as of diplomatic procedure, and since he himself was forced by the Hitler regime to emigrate, he certainly cannot be suspected of being prejudiced in favor of the defendant. The evidence given by Professor Kaufmann and other witnesses as regards the problem of documents, finds its support in what the late president of Columbia University, Nicholas Murray Butler, said in his book on the "Structure of the American State"—

Let me interrupt here, Your Honors. Occasionally, in my final plea here, I am quoting American sources from German translations which had to be retranslated into English. It is possible that one of you has the American original, which of course, will not precisely be identical with the version here because my point of departure was the German translation which had to be retranslated here. That I say in order to avoid any misunderstanding.

PRESIDING JUDGE CHRISTIANSON: I don't think there will be any difficulty.

DR. BECKER:

> "And a word of warning must also be addressed to those who wish to write history on the basis of documents and of documents only. Anyone who himself took an active part in historical events, or who has an exact knowledge of their genesis, knows how incomplete and inadequate records are and how often they must be supplemented by the knowledge of individual personalities, of personal relations and decisive incidents."

And to Cardinal Richelieu, the founder of the French national state, the cynical dictum has been ascribed that he needed only a small piece of paper with four words on it written in a person's own hand to convict anyone of a crime which would bring him to the gallows.

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* Kaufmann's testimony is recorded in the mimeographed transcript, 3 June 1948, pages 7237–7311.

All the evidence given before this Tribunal on the interpretation of documents revealed that a document often begins where diplomacy proper has already ended, a practice which we can once more observe in the controversy that has been going on between the United States and Russia during the last few weeks. Furthermore, it has become obvious that documents are often written by diplomats with the sole object of producing a certain effect on the ruling regime; or of camouflaging and covering up the real activity of the author; or else, like the document concerning Poland which I mentioned a moment ago, they are intelligible only in conjunction with a complicated tactical move.

Precisely, in the trial against Mr. von Weizsaecker, the prosecution has introduced a larger number of documents than in any one of the preceding trials held here at Nuernberg.[1] One is tempted to say that the prosecution wished to substitute quantity for quality. Furthermore, almost all of these documents were taken from the files of the German Foreign Office. They are therefore documents which may frequently reflect part of what the defendant did but can only in the rarest cases directly express his acts or intentions. Thus, the seemingly direct evidence contained in these documents has often only a limited value as a proof. And in the many cases in which Mr. von Weizsaecker's personal partners are no longer alive, in which the testimony of their collaborators and dependents, as well as the information communicated to them by the deceased, must be resorted to. The seemingly indirect evidence is of an essentially greater value as a proof, because this seemingly indirect evidence is, in these circumstances, the safest method of finding out what really happened, of ascertaining the *res gestae* with which this trial is concerned.

The Tribunal may possibly have asked itself more than once on what evidence they were to base their findings if the written word is liable to so many interpretations? These events can be appreciated only with the help of the persons who took part in them. The evidence announced by my American colleague, Mr. Magee, in our opening statement[2] was therefore chiefly based on the testimony of witnesses. If the Tribunal glances today once more through our opening statement, it will find that none of the assertions we then made has remained unproved.

Since, especially toward the end of the presentation of our case, we have also introduced a number of documents received from the Document Center in Berlin, I wish to take this opportunity, on behalf of all counsel for the defendants from the Foreign Office,

[1] Documentary evidence offered by the prosecution and defense in this case is explained in the introduction, in Volume XII, this series.

[2] Reproduced in section V C, Volume XII, this series.

to thank the Court for having been the first Nuernberg Tribunal to give representatives of the defense access to these documents.[1] The Tribunal is certainly aware of the great technical difficulties with which this work is connected, and which are outside the influence of the Tribunal. Therefore, I regret to say, there can be no question in this trial of equal access to the files of the Document Center in Berlin as between the defense and the prosecution, in spite of the helpfulness of the Tribunal. This is shown in greater detail in the working report submitted by our representative together with the trial brief. I merely want to emphasize one fact from this report, namely, that if the amount of work done is expressed in terms of months per person, the prosecution was able to put in 160 working months as compared with 5 working months of the defense in the Document Center.

Since Mr. von Weizsaecker was indicted, three judgments have been passed here at Nuernberg on the question of aggressive war; the I.G. Farben judgment, the Krupp judgment, and the judgment in the second generals' trial.[2] These judgments clearly continue the legal interpretation of the IMT and limit the penal responsibility in wars of aggression to persons "on the policy level" or, as it is defined in the judgment rendered in Case 6, "who are in control and fix the policy." The judgment in Case 12 finally, clearly defines the situation as follows:

> "It is not a person's rank or status, but his power to shape or influence the policy of his state, which is the relevant issue for determining his criminality under the charge of crimes against peace."

The prosecution has not furnished even the shadow of a proof to show that Mr. von Weizsaecker exercised a decisive influence on Hitler's foreign policy. Moreover, there is an overwhelming abundance of evidence and defense documents revealing the fact that all decisive decisions were taken by Hitler or Ribbentrop without Mr. von Weizsaecker. On this subject, the evidence gives an unmistakable picture and even the key witness of the prosecution, Mr. Gaus, replied to a question of a member of the prosecution: "How do you estimate the amount of initiative which he was permitted in more important questions of foreign policy?" by stating: "In decisive matters he had no initiative."[3]

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[1] Reference is made to the Berlin Document Center where most of the records of the various German ministries were filed. This center was under joint British and American supervision.

[2] The three judgments referred to are—United States *vs.* Carl Krauch, et al., Case 6, I.G. Farben case, volumes VII and VIII; United States *vs.* Alfried Krupp, et al., Case 10, Krupp case, volume IX; and United States *vs.* Wilhelm von Leeb, et al., Case 12, High Command case, volumes X and XI; this series.

[3] This quotation is from an interrogation of Friedrich Gaus on 31 July 1946, made by one of the prosecution's interrogators, Mr. Beauvais, more than 1 year before the issuance of the indictment in the Ministries case. Extracts from this interrogation were offered in evidence as document Weizsaecker 459, Weizsaecker Exhibit 395.

All the evidence given by foreigners and Germans produces a clear and tragic picture of the position occupied by the State Secretary of the German Foreign Office—he had no power to make political decisions, he had no political responsibility, he was hated and despised by Ribbentrop and Hitler, his technical suggestions were almost always rejected, he was only reluctantly invited to take part in discussions, and he lived in a state of serious tension with his immediate superior. He was "practically without power" said the witness Dr. Eisenlohr. This witness, who served 30 years in the German diplomatic service, is today once more taking part in Germany's reconstruction as a mayor. "The functions of the Foreign Office in Berlin, which was under the direction of the State Secretary, were finally restricted to the mere technical execution of the directives which were issued at headquarters."[1]

If we consider this situation, the question is bound to arise as to how a man with self-respect could possibly assume such an office and hold it even for a single day. When Mr. von Weizsaecker took office, he knew what to expect. This is clear from many testimonies. Before he went to Berlin he told the Swiss citizen, Dr. Robert Boehringer, who subsequently became a director of the Joint Relief Commission [Commission Mixte] of the International Red Cross—[2]

> "Later it would look as though one had been there, and had participated. But one would have to take this odium upon oneself for the sake of the one goal to save perhaps the peace."

Dr. Boehringer further testified:

> "At that time all good Germans inside and outside of the Foreign Office implored him to accept the position in Berlin which had been offered to him and to remain in it, for all hopes to prevent what possibly could be prevented rested on him."

This seems difficult to understand, because one may ask what could possibly have been prevented by a man occupying a position when those in power no longer allowed him any influence. And one may, furthermore, ask oneself what all the witnesses including the former German Chancellor Bruening, or the highest German executive in the combined Anglo-American zone, Dr. Pfuender, and the president of the greatest scientific society of Germany, the "Max Planck Society for the Promotion of Science," Professor Dr. Otto Hahn have in mind when they say that it was so absolutely necessary for Mr. von Weizsaecker to stay in office; that they themselves had advised it; that he had prevented so much

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[1] This quotation was taken from an affidavit by Dr. Ernst Eisenlohr (Weizsaecker 280, Weizsaecker Ex. 338).

[2] Quotations from an affidavit by Dr. Robert Boehringer (Weizsaecker 156, Weizsaecker Ex. 336).

and had been able to help so many, etc.? And what, finally, had the numerous foreign witnesses in mind, like the counsellor of the American Embassy in Berlin, Ferdinand L. Mayer, who advised Mr. von Weizsaecker to assume the office, chiefly because they knew of his "total disagreement with and total detestation of the Nazi regime" and hoped for a moderating influence, and what did they mean when they confirmed this influence from their experiences of many years? How is it possible that the military leader of political resistance in Germany, General Beck, asked Mr. von Weizsaecker in so many words to remain in office, if this office was politically of no influence? The reply was given by Mr. von Weizsaecker in the witness stand when he answered my question "so you did not have any political responsibility of your own at all?" by saying (*Tr. p. 8098*):

> "Yes, I did; and without this independent responsibility I would not have been able to stick to my post. But this responsibility only existed within the framework which I was able to create for myself. It was a responsibility, not under the minister, but against the Minister. Ribbentrop had no feeling at all for the most important means of diplomacy, that is, for diplomatic conversation as such, and that is why he often left it to me to meet and talk to the foreign diplomats; and that is also why I was able to create a margin for effective work of my own for which, of course, I bear the entire responsibility. Ribbentrop believed that he had left to me only a technical function."

And to a further question of mine, "What else do you consider to come within your political responsibility?" he replied (*Tr. p. 8098*):

> "Political work in the Foreign Office, insofar as it was dedicated to resistance, was covered by me politically and I must stand responsible for it. Ribbentrop, in the State Secretary, wanted what you might call a first class chief clerk. In his opinion, this man was not entitled to political responsibility. And in opposition to Ribbentrop and to the Hitler regime, I created a circle where I could work on my own initiative, and for this I bear responsibility."

This margin for effective work of his own was provided for Mr. von Weizsaecker only in and by the office of State Secretary; no private person could have exercised this activity. Although it is true to say that the distribution of powers in the dictatorship excluded him from playing his part in the shaping of official policy, one may still say that each of his official activ-

ities involved certain demands which he could use for an activity of his own. The most important elements of this activity were the diplomatic talks with the foreign diplomats accredited in Berlin and the influence he exercised on foreign governments through his trusted diplomatic assistants.

His activity was determined by three simple guiding principles!

1. The preservation of peace by mutual agreements on demands which would have been put forward by any German Government. It was not Mr. von Weizsaecker's fault that foreign countries allowed themselves to be forced by Hitler to grant to the latter what they had refused to Stresemann and Bruening.

2. The prevention of Hitler's policy of aggression through the instrumentality of friendly advice from Rome, which Hitler was inclined to listen to with greater patience than to suggestions from other quarters, as well as through clear warnings issued in good time from London, that is to say, by bringing about the clarification which had been lacking in 1914.

3. And this became important above all during the war—the idea of preserving the neutral substance in order to keep the largest possible part of the world out of the war and its destructions, and in order to preserve it as a starting point from which a peaceful order could once more be restored.

To renew advice from Rome and warning from London in ever changing ways and to direct such advice and warning to the right destination was the most important task which Mr. von Weizsaecker had set for himself until the outbreak of war. This was the fundamental subject with which the Berlin triangle von Weizsaecker-Attolico-Henderson was concerned. The relation of the Italian Ambassador Attolico to the Italian Government was similar to that existing between Mr. von Weizsaecker on the one hand and von Ribbentrop and Hitler on the other. The British Ambassador, Sir Nevile Henderson, describes Attolico with the following words:[1]

> "He was, indeed, absolutely wholehearted and selfless in the persistence of his exertions to save Europe from the horrors of war; and he devoted all his great tact and energy to that sole purpose. He was, moreover, very ably seconded by his wife, who spoke German fluently, which the Ambassador did not."

And, as regards Mr. von Weizsaecker, Henderson said to a young German diplomat—[2]

[1] Henderson, Sir Nevile, Failure of a Mission (G. P. Putnam's Sons, New York, 1940), page 171. An extract from this book was introduced in evidence as Document Weizsaecker 39, Weizsaecker Exhibit 65.

[2] Quotation from an affidavit of Gottfried von Nostitz (Weizsaecker 363, Weizsaecker Ex. 367).

"If any of your people was ready to do his utmost for the preservation of world peace, it was your State Secretary."

Attolico and Henderson are dead. On behalf of Attolico, two top members of his staff, Lanza and Luciolli, who are both once more representing postwar Italy diplomatically at important posts, speak to this Tribunal through affidavits and through excerpts from the memoirs which they have published in the meantime. Cooperation between Mr. von Weizsaecker and Attolico was also described by Karl Burckhardt, the Danzig League of Nations commissioner, and later president of the International Red Cross, who is today representing Switzerland in Paris and in the United Nations. His records are of particular importance because, on the one hand, they contain notes made at the time of the events they describe and because, on the other hand, they constitute sworn statements of the true facts. There is also Countess Attolico, who was a trusted assistant of her husband, and who has given evidence on the fundamental principles as well as on the details of her husband's cooperation with Mr. von Weizsaecker. In doing so, she summed up the diplomatic experience of her husband with these words—*

"Weizsaecker was the outstanding representative of the German peace party and fought a fierce, silent, and strenuous battle to prevent the war * * *. Weizsaecker put his life in danger for this purpose."

Furthermore, Countess Attolico gives an illuminating picture of the devious ways and the camouflaged language which had to be used in order to protect the cooperation of the two.

In his memoirs, which were published during the war, Henderson had to be very careful with what he said about Mr. von Weizsaecker in order not to cause him embarrassment, but he nevertheless gives a clear picture of their common work for peace. Also Henderson's assistant, Sir Ivone Kirkpatrick, who is today an Under Secretary of State in the British Foreign Office, as well as Minister Steel, the present political adviser of General Robertson, the [Military] Governor of the British Zone of Occupation, have confirmed this to the Tribunal in the summaries they give in their affidavits.

It is particularly interesting to note that not only Mr. von Weizsaecker's collaborators have spoken in his favor before this Tribunal, but that precisely representatives of countries which were at war with Germany thought it necessary, for the sake of justice, and across all the abysses which are still separating

* Affidavit of Countess Attolico (Weizsaecker 152, Weizsaecker Ex. 5).

Germany from the world today, to testify to the policy of peace which Mr. von Weizsaecker constantly pursued while he was in office.

That Mr. von Weizsaecker was not involved in the methods used in the action against Austria has been confirmed even by the Austrian statesmen themselves—Federal President Miklas[1] and the head of the political division of the Austrian Foreign Office, Mr. Hornbostel,[2] as prosecution witnesses; the former Austrian Foreign Minister, Guido Schmidt, as a defense witness. Finally, a German diplomat has confirmed that Mr. von Weizsaecker endeavored even at the last moment to prevent the Anschluss from being carried through as a military operation.

From this point onward, Mr. von Weizsaecker's line of policy for the preservation of peace can be easily followed. The so-called "weekend crisis" in the spring of 1938 was quickly liquidated through his conciliatory information to Henderson for which he was later blamed by Ribbentrop. While Hitler and von Ribbentrop wanted him to turn Henderson away when he arrived at the Foreign Office with the mistaken rumors about Germany's mobilization along the Czech frontier, Mr. von Weizsaecker brought about an immediate relaxation of the political tension by rapidly obtaining and transmitting a clear denial from the German High Command. He could not prevent the false reports published in the foreign press about Hitler's alleged retreat from being the last straw in the latter's decision in favor of intervention against Czechoslovakia.

In the course of the following months, Mr. von Weizsaecker did his utmost to make von Ribbentrop understand that the German intervention in Czechoslovakia was bound to bring about a world war. Even the official records on Mr. von Weizsaecker's talks with von Ribbentrop on 21 July and on 19 August, as well as a memorandum addressed to von Ribbentrop on 30 August clearly reflect his endeavors to prevent a disaster. At the same time, he endeavored to exercise some direct influence on Hitler through Hess and Hewel, as well as through the former Hungarian regent, Horthy, and the Hungarian Foreign Minister Kanya in connection with a visit which the Hungarian statesmen paid to Germany.

At the same time, Mr. von Weizsaecker caused the German Chargé d'Affaires in London to emphasize the danger that was threatening Czechoslovakia, keeping his action carefully secret

[1] The testimony of prosecution witness Wilhelm Miklas was taken on 19 January 1948 in Vienna before Judges Maguire and Powers, acting as commissioners for the Tribunal. A translation of this testimony was introduced in evidence as Document NG-5082, Prosecution Exhibit 2724.

[2] The testimony of Theodore Hornbostel is recorded in mimeographed transcript, 8 January 1948, pages 264-310.

from von Ribbentrop. Von Weizsaecker's idea was to cause the British to express their views clearly and in good time because he wanted Hitler to know that a world war would be the consequence of his action. Mr. von Weizsaecker even went to the point of having the mobilization of the home fleet suggested to the British Government in order to make Hitler understand the seriousness of the world situation and to prevent Germany and the world from slithering into another war. By his action Mr. von Weizsaecker did not rouse Great Britain against Germany, but his idea was to bring out the British attitude in good time and unmistakably contrary to the political habits of the British.

In a similar way, Mr. von Weizsaecker sought to influence the British Government through the League of Nations Commissioner, Karl Burckhardt, and with the same idea in mind he maintained constant and uninterrupted contact with Attolico and Henderson. He also suggested to the chiefs of the German missions abroad to send in reports emphasizing the danger to which Hitler exposed Germany. At the last minute, Mr. von Weizsaecker then caused the German Chargé d'Affaires in London to suggest to the British Government that they should make representations to Mussolini. These representations were actually made and coincided with a report from Attolico which von Weizsaecker had also suggested. Thereupon, Mussolini made his proposal for a conference. Mr. von Weizsaecker then made a draft for this conference, obtained Hitler's approval with Goering's and von Neurath's help, and played this draft through Attolico into Mussolini's hands so that the latter took it to Munich as a proposal of his own. At the Munich conference it became the basis of discussion contrary to von Ribbentrop's wishes.

Again and again we have met with such tactics in the course of this trial. Mr. von Weizsaecker himself was certainly not one of the powerful influences of the official policy. But this very fact accounts for the tremendous difficulties of his game. All he could try to do was bring about a situation in which those in power would act in the sense in which he wished them to act. It is obvious that the diplomat who achieves a solution by using devious ways is seldom identical with the holder of political power who carries out the solution on the forefront of the political scene and who, until a short time previously, would not have given it a thought. This is an element of particular tragedy connected with diplomatic action. The whims of a dictator or the accidents of a parliamentary majority decision can destroy the result of years of hard work. The initiative of a diplomat can take effect only in the action taken by the politician, who, however, is at the same time under the influence of innumerable other driving forces.

As regards the course of the Czechoslovakia crisis, the defense has succeeded in assembling the mosaic of diplomatic talks, warnings, and actions to form a very clear picture in which Mr. von Weizsaecker appears as the indefatigable fighter for the cause of peace, who ultimately succeeded in bringing about a peaceful solution in contrast to Hitler's plans of aggression. The prosecution merely considered the political foreground and sought to minimize the part played by von Weizsaecker by emphasizing that of Goering and others.

Munich stands today in a political twilight. The policy pursued by the Western Powers before Munich can be criticized from many angles, and it confronted particularly the German opponents of national socialism with great surprises. But in view of the very real danger which threatened the world in the autumn of 1938 with another world war, we should not overlook the fact that in those days Munich saved the peace of the world. Hitler had planned to conquer but had been forced to the conference table. His reaction to all this, as it found expression in the famous Saarbruecken speech shortly after Munich, speaks for itself, and the Allies who later turned against the spirit of Munich should remember, as one example among many, the report of the French Foreign Minister, Monsieur Bonnet, on the visit of the American Ambassador, Mr. Bullitt, to the Quai d'Orsay after the Munich conference—*

> "The next morning at an early hour, Ambassador Bullitt surprised us in our apartment, his arms full of flowers, tears in his eyes, and brought us the brotherly and joyful greetings of America."

Mr. von Weizsaecker found himself in a particularly difficult situation in those days. He was in close contact with the leaders of the military opposition, who had prepared a putsch in case Hitler should risk a war. Von Weizsaecker nevertheless endeavored to save the peace; to provoke a war in order to enable the putsch to come off would have been a frivolous game. He kept the leaders of the putsch currently informed, though, so that they might select the right moment for their action. If the efforts to save peace should fail, there would always be this last chance.

[Adjournment for day]

DR. BECKER: Yesterday I concluded in speaking of the Munich conference. I now continue.

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* Bonnet, Georges, Defense de la Paix, de Washington au Quai d'Orsay (Geneva, 1946). An extract from this book was introduced in evidence as Document Weizsaecker 238, Weizsaecker Exhibit 75.

At the time following upon Munich the question of a guarantee to what remained of Czechoslovakia played a special part. This question of the guarantee to Czechoslovakia was seized upon by the prosecution, as the result of a complete misconception of the situation, in an attempt to prove that Mr. von Weizsaecker was connected with Hitler's plans of aggression. Mr. von Weizsaecker favored the idea of a guarantee; Hitler rejected this idea clearly and emphatically. It was just because he himself was not a policy maker that von Weizsaecker endeavored to put the problem in cold storage, to turn the discussion into other channels for the benefit of Czechoslovakia, in order not to incite Hitler's anger once more against her and not to drive him to decisions of force. According to the rule that one should "let sleeping dogs lie," he endeavored to keep the Czech question away from Hitler. This is a typically diplomatic method in which there is only one point open to doubt. That is the question as to whether the political calculation was correct. On this subject, however, an observer reviewing such developments at a later stage may possibly reach a different conclusion in the light of his fuller knowledge of the facts. But that does not affect the judicial appreciation of this calculation which can alone be conditioned by von Weizsaecker's intentions as they were in those days.

It may be helpful, in order to obtain a clearer vision of Mr. von Weizsaecker's methods of negotiation in that year, to quote the French Ambassador, Monsieur Frençois-Poncet, who sums up his experience of many years of diplomatic intercourse with Mr. von Weizsaecker in the following sentence:*

> "I have always found Monsieur von Weizsaecker to be a man of spirit, reasonable, and well balanced, by no means exalted, nor violent; but on the contrary, peace-loving, tolerant, and conciliatory, always endeavoring to clear up misunderstandings, to settle disturbing incidents, and to avoid the worst."

The fact that the representative of a country which experienced a German occupation three times in 70 years, who was himself deported to Germany and kept in confinement for 22 months, gives this testimony as a summary of the many diplomatic talks and of the indefatigable joint efforts "to avoid the worst," speaks for itself.

I cannot at this juncture give the complete history of the work which Mr. von Weizsaecker has carried on in the interests of peace. I shall give a full list of the abundant material of foreign and German testimonies on this subject in the trial brief. I

* Statement of Ambassador François-Poncet of 1 September 1947 (Weizsaecker 199, Weizsaecker Ex. 34).

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may be allowed, however, to say a few words about the Polish crisis, which brought about the war in spite of all the efforts to save the peace. Mr. von Weizsaecker's endeavors to counteract the attack on Poland presents in many respects a similar picture to his endeavors in the summer of 1938. In this instance, however, the situation was complicated by the often disquieting attitude adopted by the Poles, as it is confirmed in an impressive manner in the memoirs of Monsieur Noel who was then French Ambassador to Warsaw and extracts from whose writings we have introduced into evidence. The situation was also complicated by the fact that British policy had allowed itself to be subordinated to Polish foreign policy. Mr. von Weizsaecker's theory of the danger involved in the blank check which the British Government had given the Poles and which has been the subject of careful consideration by the Tribunal can today be supplemented by the views expressed by the first Minister of Information in the Churchill government, who later became British Ambassador to Paris. Mr. Duff Cooper emphasizes in his book, The Second World War (Charles Scribner's Sons, New York, 1939, p. 320), the consequences of the British blank check, and writes (*Weizsaecker 521 (a), Weizsaecker Ex. 476*):

> "Never in history have we left the decision as to whether or not Great Britain was to enter war to a secondary power. Now this decision today is left with a handful of men whose names, perhaps with the exception of Colonel Beck, are completely unknown to our people. These unknown people are now in a position to unleash tomorrow a European war."

Incidentally, the same view is taken by the afore-mentioned French Ambassador Monsieur Noel. Once more, Mr. von Weizsaecker acted in the Polish question in the same way as in 1938—he induced Rome to exercise a moderating influence; he caused the Western Powers clearly to indicate their determination to intervene, in contrast to the Hitler-von Ribbentrop theory that they were only bluffing, and he endeavored to bring about a moderating influence to be exercised by the Western Powers on Warsaw in order to prevent the Poles from giving Hitler a pretext for intervention.

In the summer of 1939 the Russian question played a special part. Mr. von Weizsaecker had at first welcomed the relaxation of the German-Russian tension, just as he welcomed any other relaxation, and he had firmly assumed that the Russians themselves would see to it that this *détente* would not lead to a real understanding with Hitler. But as soon as Mr. von Weizsaecker became aware that a pact between Hitler and Stalin was possible,

he also realized that such a pact would bring forth a situation which might lead to a war which was bound to end in European chaos. He therefore resorted to the desperate action of warning the British government that such a pact might be concluded, since negotiations for the conclusion of an Anglo-Russian pact were being carried on in Moscow at the same time. Mr. von Weizsaecker had at first watched these negotiations with some misgivings because he feared they might give a fresh impetus to Hitler's encirclement complex. But in view of the situation as it presented itself under the prospects of a German-Russian pact, Mr. von Weizsaecker viewed the conclusion of an Anglo-Russian agreement as the sole guarantee of peace which was still attainable. Lord Vansittart's reply to Mr. von Weizsaecker's emissary was (*Tr. p. 12039*)—[1]

> "Put your mind at ease, this time we are definitely making the treaty with the Soviet Union."

No wonder that Lord Vansittart[2], as a prosecution witness, is not inclined today to admit that he received this warning and that he had to be reminded of the true facts by the second affidavit which Lord Halifax, who was then British Foreign Secretary, presented for Mr. von Weizsaecker. In a talk with Henderson, Mr. von Weizsaecker once again issued a direct warning about the Hitler-Stalin pact.

The above communication to the British Government is only one example from the never-ending chain of Mr. von Weizsaecker's endeavors to prevent the threatening war. It shows that he accepted every personal risk in his work for peace, but it also shows to what lengths a patriotic German had to go in his desire to prevent German policy from being pushed into the abyss toward which it was moving, and to spare the world the threatening chaos.

Owing to the habit of making sudden decisions, which is common to all dictators, there always remained a slight chance, of which Mr. von Weizsaecker again and again tried to avail himself. Down to the last moment, he cooperated with Henderson and Attolico. Even 2 days before the outbreak of war, he endeavored to bring about an armistice and a conference. And the man who, in the opinion of the prosecution, was an enthusiastic supporter of Hitler's war policy, said on the eve of the outbreak

[1] The quotation is from the testimony of defense witness Theodor Kordt. His testimony is recorded in mimeographed transcript, 14 and 15 July 1948; pages 12003–12077, 12273–12326.

[2] Two affidavits of Lord Vansittart were introduced in evidence by the prosecution as Documents NG–5786, Prosecution Exhibit C–65, and NG–5786A, Prosecution Exhibit C–65A.

of war, during a conversation with Ambassador von Hassell on the last possibilities to prevent the disaster:[1]

"Must we really be hurled into the abyss because of two madmen?"

And on the opening of the daily morning conference in the Foreign Office, he said on the morning of the outbreak of war only these words:[2]

"Gentlemen, the decision has been made; let each one see to it that he serves the fatherland in the manner that he can answer to before his conscience."

After these words he left the meeting, which went on in his absence. It is therefore no wonder that Lord Halifax, who was British Foreign Minister in that year, before he represented Great Britain as Ambassador in Washington after 1940, summarizes the experience of British Foreign Service with Mr. von Weizsaecker in the following sentences of his affidavit (*Weizsaecker 408, Weizsaecker Ex. 121*):

"Baron von Weizsaecker was frequently reported to me by my advisers at the Foreign Office and by his Britannic Majesty's Ambassador in Berlin during my tenure of office as Secretary of State for Foreign Affairs from February 1938 to December 1940 as being a convinced opponent of Nazi ideals and policies, and as using his official position in the Ministry of Foreign Affairs in Berlin to hinder, so far as lay in his power, the execution of the policy by Mr. Ribbentrop."

The secrecy regulations of the British Government have unfortunately prevented counsel for the defense from submitting to the Tribunal the secret reports of British diplomacy. However, the affidavit made by Lord Halifax is the result of an exact knowledge of the material contained in the files of the British Foreign Office about Mr. von Weizsaecker and represents the condensed diplomatic experience of the British diplomats in regard to their work with him.

After the outbreak of war, diplomatic intercourse was naturally concentrated on the relations with the neutral states. Besides many reports from German witnesses on efforts made by von Weizsaecker in individual cases for the preservation of the neutral substance, there is one fact which is particularly noteworthy in this connection. That is the fact that the very representatives of countries which were later drawn into the war with Germany

[1] Hassell, Ulrich von, The Von Hassell Diaries, 1938–1944 (Doubleday and Company, Inc., Garden City, New York, 1947) page 68.

[2] Quotation from an affidavit of Roland Schacht (Weizsaecker 404, Weizsaecker Ex. 348).

did not hesitate to testify in favor of Mr. von Weizsaecker before this Tribunal. Thus, the Belgian Ambassador, Vicomte Davignon, testifies to Mr. von Weizsaecker's policy of peace and declares in particular—and this is especially important as regards the charges made by the prosecution against Mr. von Weizsaecker:[1]

"He made no attempt to deceive the undersigned or to relax his vigilance by stating that an invasion of Belgium and the Low Countries was out of the question."

The Tribunal itself heard Bishop Berggrav of Norway, who knew Mr. von Weizsaecker's policy of peace from his own experience and who confirmed that Mr. von Weizsaecker warned the Norwegian resistance movement about Gauleiter Terboven.[2] In the same way, the representative of German occupied Denmark, Minister Mohr, confirms that Mr. von Weizsaecker issued diplomatic warnings even after Denmark had been occupied.[3]

These neutral diplomats, in their capacity as representatives of the protecting power and in their efforts to protect their own neutrality from the dangers that threatened it, were in an especially good position to watch Mr. von Weizsaecker's cautious diplomatic work. The Swedish Minister in Berlin, who is today president of the Swedish Board of Trade, Mr. Arvid Richert, sums up, as he puts it, "countless conversations of an official nature with him as well as countless talks at private meetings outside his office" with the following words:[4]

"From these conversations and talks I gained the definite impression that Freiherr von Weizsaecker was motivated by the sincere wish to avoid the war and to mitigate its effects in every possible way after it had broken out. I am convinced that Freiherr von Weizsaecker did everything within his power in order to avoid the outbreak of the war and that, as far as this was at all possible, he strove for the preservation of the rules and customs of international law and of humanity in warfare."

And the Portuguese Minister, Comte de Tovar, summarizes his negotiations with Mr. von Weizsaecker in the following description:[5]

"A true diplomat, in other words, moderate, cautious, conciliatory, essentially peaceful, and fundamentally opposed to all methods involving violence * * *."

[1] Quotation from the affidavit of Jacques Davignon (Weizsaecker 204, Weizsaecker Ex. 142).
[2] Testimony of Bishop Eivind Berggrav is recorded in mimeographed transcript, 14 June 1948, pages 8514-8543.
[3] Declaration of O. C. Mohr (Weizsaecker 184, Weizsaecker Ex. 134).
[4] Declaration of Arvid Richert (Weizsaecker 182, Weizsaecker Ex. 8).
[5] Declaration of Comte de Tevar (Weizsaecker 178, Weizsaecker Ex. 36).

These affidavits are not character testimonies, but they are the effect of experiences resulting from political work carried on for years, and they represent a flat contradiction of the prosecution's charge that von Weizsaecker cooperated in, or even gave his enthusiastic support to, Hitler's war policy. Among these documents we must also mention the affidavits made by Swiss statesmen like the former Federal President Etter, and the Berlin Minister of Switzerland, Froelicher. I shall refrain from reading the quotation[1] and continue with the following.

There is also evidence on numerous individual actions undertaken by Mr. von Weizsaecker. A case in point is the illuminating scene which occurred during Sumner Welles' visit to Berlin. The American Under Secretary of State graphically describes how Mr. von Weizsaecker, in violation of the instructions which he had received, tried to use even the scanty opportunities of this critical time for a peace move, and that he cooperated for this purpose without further ado with his American colleague against the intentions of his own government.

There is no end to the efforts which Mr. von Weizsaecker made during his tenure of office in order to restore peace. Ambassador von Buelow-Schwante[2] described impressively how he approached the King of the Belgians through Count Capelle upon von Weizsaecker's suggestion. As regards the peace move made by Bishop Berggrav, he himself reported to the Tribunal on what he did. Moreover the various soundings undertaken by the German resistance movement were rendered possible and supported by Mr. von Weizsaecker. At no time did Mr. von Weizsaecker allow himself to be deceived by the military successes. Through various channels he worked for a peace without Hitler.

* * * * * * *

In considering the individual acts, one must not leave out of account, moreover, a general legal principle evolved by Roman law and which is expressed in the Digests with the following words:

"D.L. 15,50 Paulus: *Culpa caret qui scit quod prohibere non protest*—

[1] The quotation omitted was the following extract from an affidavit of Hans Froelicher (Weizsaecker 170, Weizsaecker Ex. 131):

"Nor was the faith I had in Mr. von Weizsaecker ever deceived. In the subsequent years, up to the time when he left for Vatican City in the summer of 1943, I conferred with Mr. von Weizsaecker on all important diplomatic matters. In my dealings with him I found that von Weizsaecker did all he could to meet our just demands and to save our country from disaster. In this I was able to establish the fact too that Hitler's adventurous policy filled the State Secretary with the gravest anxiety and that, despite his limited possibility of exerting any influence, he endeavored to prevent the outbreak of war."

[2] Testimony of defense witness Buelow-Schwante is recorded in mimeogarphed transcript, 23 and 24 June 1948; pages 9794–9843, 9963–10006.

"He is not guilty who knows what he cannot prevent."

We must keep this principle in mind when we now turn, in conclusion, to count five. This concerns the darkest chapter in the history of the Hitler regime—the extermination action against the Jews. Terrible things happened, so terrible that it is difficult to find the right standards for an examination of the underlying causes, because these are events which are actually beyond the conceivable. And before the Tribunal which has dealt with this question, one defendant after the other got up and declared that it was not his fault, that he either didn't know or could not prevent what happened, but that he nevertheless had prevented this or that. Everyone claims to have saved the few who were actually saved, no one admitted killing the many victims. We have reached a stage in this problem where whoever opens his mouth to say that he wanted to prevent worse things from happening is immediately considered as belonging to the large numbers of those who are still keeping their eyes closed to their own actions or had closed them in the past. We know how many in Hitler's state allowed themselves to be led down step by step, as the result of inertia, ambition, misguided idealism, opportunism, indifference, negligence, but above all, weakness, until they had gradually reached a stage which must be called criminal, when they kept their eyes closed to the end to which this road would lead, and who still do not or cannot see in its true perspective.

To the phenomenon that nobody wants to be guilty, we cannot reply by saying that everyone is guilty who happened to be in the neighborhood of the guilty or in the neighborhood of the place where these crimes were perpetrated. In a murder case it is often easier to find at the place of the murder the people who tried to help the victim or even defended him, than to find the murderer. Anyone who really wanted to help did not consider flight.

It is the task of this trial to clarify the causes of the evil and not to create fresh injustice. It is necessary to look for the guilty ones, but this should not lead us to close our eyes to the men who fought against this evil in indefatigable self-sacrifice. In Hitler's state, to oppose the evil effectively meant to touch it. Mr. von Weizsaecker did not ask himself for one moment whether his action could bring him harm or not. His idea was only whether by his persevering in office, he could still help others. He remained in office because he had clearly recognized the fundamental character of the evil from the very outset, although many of its expressions did not become known to him or went beyond

his imagination. He endeavored, as far as possible, to fight the evil at its roots, in the Jewish question not less than in all the other questions.

In no part of the presentation of their case has the prosecution left the realm of objectivity and advanced into the sphere of mere assertions, nay, even insults, to such an extent as in regard to count five. For a long time we have hesitated to believe that, in view of what had been ascertained in the other trials as to the real course of events leading to the extermination of the Jews, in view of the common knowledge drawn from the Nuernberg trials, the prosecution seriously wished to assert that the German Foreign Office had killed the Jews. We therefore did not introduce material on the real course of the action against the Jews until the last stage of the trial, and then only in a haphazard way, and gave a description of it in our trial brief. If we could introduce all material from trials conducted in Germany and abroad concerning these facts, everyone would clearly recognize how grotesque the attempt is to transfer the charge of guilt from Eichmann, Heydrich, Hoess, and their associates to Mr. von Weizsaecker. This grotesque distortion of the real conditions has forced us to deal to a somewhat larger extent with the objective material and to refer also to the question of the casuality of these happenings. I would like, therefore, to draw the attention of the Tribunal to the material submitted by us in the last phase of the trial, as well as to the description of this question given in our trial brief. Therein we also described the channel through which the orders were passed on from Hitler to Himmler and from there to Heydrich, Eichmann, and Hoess, and the exclusiveness as well as the consequence of this channel. I must content myself at this stage with this reference.

Von Weizsaecker's defense was based in the Jewish question, just as in all of the problems with which we are here concerned, not on theory and technicalities, but on the real facts of the situation. The concept of jurisdiction is replaced in the totalitarian state by the concept of influence. The essential point is: Did von Weizsaecker really persecute the Jews or did he help them? We should not ask—did he do his utmost to keep himself out of this business and to wash his own hands of it, but we must consider the fate of the persecutees, and if we do so, the question is: Did not von Weizsaecker, on the contrary, create for himself a possibility of giving genuine help; and did he not avail himself of this possibility to the absolute limit? I do not have to deal here with the attempts made by the prosecution to cast doubt also on Mr. von Weizsaecker's moral attitude, as was attempted through the distorted reproduction of the Rath speech, or through

the reply to the Mufti which he was instructed to make. In these cases the real facts could easily be clarified.

The questions as to the distribution of influences and jurisdiction, especially as regards the Germany division [Abteilung Deutschland] and the activity of the Under State Secretary [Unterstaatssekretaer] Luther, who was introduced by von Ribbentrop, has been dealt with in great detail. Luther was to spy on the old Foreign Office from within and to help von Ribbentrop to maintain smooth relations with the various branches of the Party. Owing to this task, Luther could not in actual fact be a subordinate to von Weizsaecker, if we consider the real character of Luther's post. In addition to the large number of affidavits which the defense introduced as regards this question, and in addition to the prosecution documents which reveal how Luther bypassed von Weizsaecker in his contacts with von Ribbentrop, the defense have now also introduced documents showing how Luther reached out as far as Eichmann's desk in the Reich Security Main Office in order to see to it also that the communications from that office went directly to the Germany division and not to the real Foreign Office. Von Ribbentrop's evidence before the IMT, where he said that the Germany division was not the Foreign Office, has been proved many times to be correct in this trial. We can also assume that von Weizsaecker can be held responsible only for what he himself did and not for what Luther did.

In this Jewish question, the prosecution makes a particularly serious charge. This is the very reason why an especially careful detailed proof is indispensable, and why a summary proof or a mere assumption are altogether insufficient. That is why we have endeavored in the trial brief to make a very detailed analysis of the documents submitted to the Tribunal. In making this analysis of the documents we have asked ourselves these questions: (1) What did Mr. von Weizsaecker really know? (2) Did he really exhaust the possibilities of mitigation and secret help? (3) Did he, by his acts, take part in any extermination measures?

The key document of the prosecution, the so-called "record about the final solution," was never submitted to Mr. von Weizsaecker nor was he informed of the most important results of this conference with which we are here concerned. The procedure followed by the prosecution in this important matter is not helpful in finding the truth. In the index to its document book the prosecution alleges that von Weizsaecker had seen the record; in the indictment the prosecution alleges that von Weizsaecker was informed, immediately after the Wannsee conference, on the results reached at that conference, but, in fact, the prosecution can submit nothing but an allegation from Luther, written 7 months

after the meeting, which reads: "State Secretary von Weizsaecker was informed of the meeting." He says nothing about when, by whom, and of what Mr. von Weizsaecker was informed. The details given in Luther's report, as well as the evidence given by Mr. von Weizsaecker's assistants, reveal that Mr. von Weizsaecker at most merely heard that a conference took place, but that he was not informed of the actual results achieved at the conference.

There is only one document in this whole group concerning the so-called "final solution of the Jewish question" which concerns Mr. von Weizsaecker. This captured document was not introduced by the prosecution. In connection with a question about measures to be taken in the future against the so-called persons of mixed race, Mr. von Weizsaecker said that the Foreign Office did not possess the data and the knowledge concerning the planned measures, whereupon he gave the following instructions:[1]

> "I think we should limit ourselves to the general statement that in every case the milder solution is preferable from the point of view of foreign policy * * *."

Dr. Woermann[2] testified how these guiding lines from the State Secretary determined his attitude during the whole time. Even a short time before von Weizsaecker's tenure of office came to an end, another document reveals that the Foreign Office continued to consider this instruction as fundamental. This document was included along those submitted by the prosecution in the rebuttal when the prosecution failed, however, to introduce the other document to which I have just referred.

Since the prosecution itself was obviously doubtful regarding its own assertions on the "final solution" document, it tried, by an ingenious combination of the problem of the Einsatzgruppen with the problem of deportations, especially in the cross-examination, to show that Mr. von Weizsaecker had detailed knowledge of the extermination program. The truth is that von Weizsaecker knew about the activity of the Einsatzgruppen, even before he had read their reports, but he could not officially concern himself with their activity, of which he had been informed by members of the resistance movement and especially by Admiral Canaris, and had tried in vain to induce von Ribbentrop to oppose this activity. In this he was just as unsuccessful as Minister Hentig who protested spontaneously to von Ribbentrop, whereupon, the latter had an outburst and forbade Hentig, in violent terms, ever to

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[1] Memorandum of 16 September 1942, from the defendant von Weizsaecker to Under State Secretary Luther (Weizsaecker 406, Weizsaecker Ex. 290).

[2] Testimony of defendant Woermann is recorded in mimeograph transcript, 2, 6, 9, July, and 28 October 1948; pages 10843–10876, 11032–11140, 11189–11284, 11298–11395, 11451–11552.

touch upon this subject again. From this knowledge of the activity of the Einsatzgruppen, of the so-called retaliatory measures taken in the Balkans and western Europe, as well as because of his general attitude toward the Hitler regime, Mr. von Weizsaecker could only infer that the Jews, wherever Hitler would meet them in the German domain, would be in extreme danger. The basis on which von Weizsaecker acted was the fact that, as a matter of principle, he expected the worst from the Hitler regime. He learned about the concrete measures of mass extermination of the Jews deported to the East only after he was in Rome. There is not a single case where a human being was killed of which Mr. von Weizsaecker had previous knowledge, or of which he was informed in time to be able to counteract it, and he certainly never agreed. That is clearly shown by a detailed examination which we have made in our trial brief.

Among the most important charges of the prosecution, there is von Weizsaecker's alleged participation in the extermination of the western European Jews. We can prove today that trains with these Jews were already on their way when the documents on which the prosecution bases its case passed over Mr. von Weizsaecker's desk. We can prove that measures concerning the Jews were taken and carried out irrespective of the reply from the German Foreign Office, even in those cases in which the Foreign Office had been asked to give its opinion.

A special part is played in the argument of the prosecution by the alleged pressure which von Weizsaecker is said to have exercised on foreign governments in the Jewish question. The document which the prosecution considers as a key document showing the pressure on Slovakia and which it also submitted to the expert witness, Professor Kaufmann, who himself is a racial persecutee of the Hitler regime, was interpreted in that sense before the Tribunal. Professor Kaufmann explained why this document actually revealed the contrary of a pressure, namely, the softening of it and, in fact, the refusal to exercise the desired pressure. When this matter was discussed between Professor Kaufmann and Mr. Kempner, the discussion was limited exclusively to this document, but in addition to that, the prosecution documents in this trial and in the IMT prove that no evacuation of Jews took place as the result of this alleged pressure. The request was made from Bratislava with a view to eliminating the obstacles to the continuation of these deportations with the help of this pressure. But this very end which the authors of the request had in mind was actually not met by von Weizsaecker's telegram. It was not until von Weizsaecker had been in Rome

for 18 months that new deportations from Slovakia, due to other causes, were undertaken.

I can only just touch on all these things here and say that the careful analysis of the existing material shows to what extent proofs are lacking to support the assertions made by the prosecution. In our trial brief we have devoted special care to reviewing the charge preferred under this count. However, considering the background of von Weizsaecker's activity as a whole, the Jewish question was a section in which he was particularly limited in his means of action. In doing so, we were able to ascertain that he attempted, not demonstratively but with adequate means, to apply the brakes to the advance of the Jewish problem. It is obvious that there is no document in which von Weizsaecker promoted the persecutions by strong words of hatred. Such language was limited to the documents of Eichmann and Dannecker and also to Luther and von Ribbentrop. We have met with no case of an initiative on the part of von Weizsaecker as regards anti-Jewish measures, but there are many examples to the contrary.

However, this attitude in itself would not have appeared to Mr. von Weizsaecker as a justification in his own conscience. In order to understand why he decided precisely in view of the persecution of the Jews to remain in office in spite of all, we must consider the views expressed by those who did not make speeches or statements to the press in those years, but who looked after the victims of the persecutions in a manner appreciated by the whole world. Finally, we must hear those who themselves came from the circle of the persecutees. And in this respect the statements made by competent men like Bishop Wurm, whose courageous struggle against the persecution of the Jews was appreciated even by the prosecution when they introduced his letter of the Secretary General of the World Council of Churches; the Dutch citizen Vissert'Hooft; the President of the International Red Cross; and the President of the Executive Committee of the United Relief Organization; the representative of the Vatican Mission; the Roman Bishop Hudal; and many others, who themselves belong to the circle of the persecutees, convey a lively picture. It is true that Mr. von Weizsaecker was unable to prevent the measures taken by the Reich Security Main Office. It is also certain that he could give the relief he did give, which the defense proved in their document books 3, 4, and 6, only because he held an official position. However, Mr. von Weizsaecker considered that the Jews could be generally saved only through a struggle for peace. Therefore, his work in the resistance con-

stitutes his ultimate and decisive answer to the persecution of the Jews.

The prosecution asserts that von Weizsaecker deliberately participated in the over-all plan of the persecution of the Jews through a large number of individual acts. The defense has made a particularly careful study precisely on this point, and showed that Mr. von Weizsaecker's intent in the general conduct of his office was directed to the opposite objective. It was this opposite objective for which he did his utmost in every one of his individual acts within the possibilities of which he could avail himself. In no case has the prosecution been able to show proof that Mr. von Weizsaecker's activity was a contributory cause in the matter of the extermination of the Jews. For this reason alone there can be no longer any question of his participation in this matter. There can be no question, either, of a consenting part within the meaning of Control Council Law No. 10, because the over-all intent of Mr. von Weizsaecker, as it manifests itself in his proven actions, excludes a consensus in the meaning of the above-mentioned law.

In April 1947 the prosecution, with a view to preparing the present trial by publicity, caused a document, which it considered to be a special charge against Mr. von Weizsaecker, to be published in the German press while von Weizsaecker was still in freedom at Lindau. This document deals with the deportation of Jews to Auschwitz.

JUDGE MAGUIRE: Is that document in evidence?

DR. BECKER: I beg your pardon. The document is not quoted here. It is quoted, however, in the trial brief. This is the document regarding the deportation of 6,000 French Jews to Auschwitz.

JUDGE MAGUIRE: I mean the prosecution's publicity. You say the prosecution's publicity? You say they gave the document to be published? Is the document they published in evidence?

DR. BECKER: The document that was published was not submitted in evidence. No. That is not in evidence.

JUDGE MAGUIRE: I don't think we ought to be referring to matters that are not in evidence or facts which are not in evidence. It looks more like propaganda than it does like argument.

DR. BECKER: I did not submit the press notice as evidence because I did not consider that it had any probative value. I merely want to refer to the fact that this document was known to the public.

JUDGE MAGUIRE: It certainly would not permit the prosecution to argue this matter.

DR. BECKER: Let me refer to the fact that documents were referred to by the prosecution statements, which were not in evidence. I believe that such reference is possible in argument. At least it is possible in German law, though the matters referred to are not actually in evidence.

In May 1947 it was published in New York and reappeared in the world press generally. Therefore, the foreign statesmen, the clergymen, and the representatives of the great charity organizations who knew Mr. von Weizsaecker from the practical work of many years placed their testimony at his disposal in the full knowledge of this document and the charge made against him by the prosecution, because these men knew who is really responsible for the action taken against the Jews, and because they knew how Mr. von Weizsaecker's initials happened to be on such documents.

Under count five, Mr. von Weizsaecker is also charged in connection with the persecution of the churches. The prosecution has devoted a whole volume of documents to his alleged activity in connection with this persecution. There is no point in the indictment where it becomes so clear that a picture which has been gained from the documents can only become a reversal of the actual events. I do not want to emphasize that a careful analysis of these documents might also reveal that Mr. von Weizsaecker helped the churches to the utmost of his possibilities in spite of the opposite instructions he was given.

Mr. von Weizsaecker himself said in the witness stand (*Tr. p. 8282*):

> "The question of impeding the activities of the churches for a long time remained, in politics, the main field of my concern and perhaps even the main field of my activities."

It is therefore not surprising that the leader of the Confessional Church, which was the champion of the Protestant struggle against national socialism, the present chairman of the Council of Evangelical Churches in Germany, Bishop Wurm; Europe's leading Evangelical theologian, the Swiss professor Karl Barth, the leader of the German Evangelical Relief Organization, Dr. Eugen Gerstenmaier, who was in those days the leading bishop of the foreign relations department of the Evangelical Churches; yes, even the bishop of the German Evangelical Church of Rumania; as well as many other Evangelical clergymen, testified to the courageous and untiring struggle which Mr. von Weizsaecker carried on for the Evangelical Church.

Here I shall summarize my final plea, to be able to finish within the time limit, and ask the Tribunal to please read this passage for itself. I shall continue about a page and a half later.

[The text of the material which Dr. Becker did not read has been incorporated in the text immediately following.]

The prosecution asserts that Mr. von Weizsaecker continuously deceived the Nuncio and that he thereby paved the way for the continuation and aggravation of the persecution of church dignitaries. The Nuncio himself is dead. His closest assistant described in lengthy statements containing many details how Mr. von Weizsaecker, as the State Secretary, was always intent upon protecting the interests of the Vatican and of the Catholic Church. A representative of the [present] Vatican Mission in Germany, who worked in the Vatican in those days testified how very much Mr. von Weizsaecker's activity was valued and appreciated in Rome at that time. The experiences of the Berlin Nuncio with Mr. von Weizsaecker were such, that Pope Pius XII, already before the arrival of Mr. von Weizsaecker as Ambassador in Rome, said literally, to the rector of the Collegium Germanicum:*

"This gives us great hope that our efforts may be continued."

Moreover, even the allegedly incriminating documents show that Mr. von Weizsaecker unmistakably favored the fulfillment of the wishes of the papal authorities. On this point also the details are given in our brief.

The great publicity which the prosecution gave before the opening of this trial to Mr. von Weizsaecker's alleged responsibility in the persecution of the churches produced a flood of testimonies addressed to the defense, from innumerable representatives of the Catholic Church, from the simple members of holy orders up to cardinals, in which these allegations were refuted and the contrary was proved by facts from their own work. Although many elements in the indictment may be due to misunderstandings of the real situation, to which people who did not know conditions in Germany easily fall victim, the charge against Mr. von Weizsaecker under the heading of persecutions of the churches is incomprehensible, and the protests raised by the competent representatives of the two church hierarchies at all levels speak for themselves.

It was no mere coincidence that toward the end of the war Mr. von Weizsaecker found in Rome a field of activity and tasks, the fulfillment of which brought him only gratitude. The testimony on his activity in Rome, including the official statement of

* Quotation is from testimony of defense witness Father Ivo Alois Zeiger, which is recorded in mimeographed transcript, 9 July 1948, pages 11646–11684.

the Vatican, is in the hands of the Tribunal. Mr. von Weizsaecker, in conjunction with all who shared his views, could make an essential contribution to saving Rome from destruction. The attempt made by the prosecution to represent, in the cross-examination of the representative of the Vatican Mission, Father Zeiger, as well as in that of the former German Commander in Chief [in Italy], Field Marshal Kesselring, the salvation of Rome as an act of propaganda on the part of Hitler, shows once more, in a particularly striking manner, the misconception of the real situation in the Third Reich. Again, Mr. von Weizsaecker was not the man in a position to make political decisions, but he could very well attempt, by his quiet activity, to cause those in power to make the decisions he wanted them to make. That Hitler would subsequently use the salvation of Rome from destruction in any event for the purposes of his own propaganda is self-evident. I believe we can rely on the protectors and inhabitants of a city to know best to whom they owe their salvation. The Holy Father himself pronounced words of memory and prayer for this man, both when he left the Vatican in 1946 and when he lived in Germany in freedom, as well as after he had been served an indictment at Nuernberg.

I cannot think of a clearer and more unmistakable answer to the charges brought forward by the prosecution.

It may be doubtful whether the world of the diplomats to which I referred at the beginning was capable of overcoming the chaos with which Mr. von Weizsaecker was confronted. In his methods and ways of expression he may have been the representative of a declining epoch, and many difficulties as regards the just appreciation of his activities may be due to this. But there is one respect in which he always acted like a young man, and it is no wonder that, beside the great representatives of European tradition, young men are, above all, among those who speak in his favor: he was always ready to accept responsibility and never eluded it. He staked his life and honor in order to save what could be saved and in order to help wherever he could help. He did not withdraw, but he intervened to prevent worse things from happening, and he helped in making better things effective.

Foreigners justly criticize none of the German mistakes so much as the lack of courage in the acceptance of responsibility. Ernst von Weizsaecker had this courage. He did not leave his country, although it would have been easy for him to do so, although he had no illusions about the Hitler regime. He kept to the hard road of overcoming the evil in painstaking work on the details. He is today a man whose face bears the traces of the suffering which that period caused in his heart. His work,

apart from isolated cases, has failed; for he neither succeeded in ultimately preserving the peace nor in preventing that void in central Europe which has today brought the world to the brink of a third world war. But do you want to judge a man according to his efforts or according to his success? It seems to me that another generation should take these efforts as a model in order perhaps to achieve success. A judgment against Ernst von Weizsaecker would be a blow against all those who are ready in Germany to accept responsibility.

It was because they appreciated this courage to accept responsibility that leading men from all over Europe were ready to testify for Mr. von Weizsaecker before this Tribunal. It is therefore not surprising that, while the trial is nearing its conclusion, at a time when the whole evidence submitted by both the defense and the prosecution has become known to the general public, Mr. Winston Churchill has also spoken. Toward the end of his great speech in the House of Commons on 29 October 1948, he referred to Mr. von Weizsaecker, and I quote:

> "Weizsaecker was a permanent official in the Foreign Office under Ribbentrop in a similar capacity as Sir Alexander Cadogan was, and now Sir Orme Sargent is in the Foreign Office here. Now, after 3½ years he is being tried."

At this moment, Mr. Churchill was interrupted, and then continued immediately after the interruption, by saying, and I quote again:

> "I am not attempting to deal with the merits of the particular case on which the Court will pronounce, and I am not informed upon them. I am using this as an illustration to show the kind of deadly error which, in my opinion, is being committed * * *."

I have been quoting from the official record of the session at the House of Commons. Mr. Churchill has communicated this record to the defense with the explicit authorization to quote from it.

JUDGE MAGUIRE: Is that in evidence?

DR. BECKER: Perhaps the Tribunal would care to see the entire transcript. I, of course, am quite prepared to make it available.

JUDGE MAGUIRE: Is it in evidence?

DR. BECKER: No. It is just the speech; it is not in evidence. It was only delivered after the conclusion of the presentation of evidence.

Three men signed the Moscow Declaration which is the underlying foundation of the London Agreement, the Control Council Law No. 10, and the whole system of war crimes trials. These men were: Roosevelt, Stalin, and Churchill. If today Mr. Chur-

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chill calls the putting of Mr. von Weizsaecker on trial a deadly error, the defense has nothing to add to this remark.

Your Honors, even the most complicated case can be reduced to simple fundamental question. In our case this question is: Has this man done all that was in his power against the evil of our time? The answer is: Yes, he has. Few people acted, suffered, and took risks like he did.

"I know this man in the essential character of his soul and I trust him because I saw him suffer and serve,"

said Bishop Berggrav.[1]

Mr. von Weizsaecker's activity constitutes, in this respect, one indivisible whole. I would like to say with Shakespeare, "He was a man, take him for all in all."

Your Honors, I ask you to acquit Mr. von Weizsaecker. That would be the only correct decision legally, politically, and—what seems to me most important—humanly.

JUDGE POWERS: That completes the oral presentation?

DR. BECKER: Yes, Your Honor.

D. Extracts from Closing Statement for the Defendant Keppler[2]

DR. SCHUBERT (counsel for defendant Keppler): May it please the Tribunal!

In order to avoid repetition, I propose to omit item I of my final plea,[3] and I request Your Honors to be good enough to read the omitted portions, which are on pages 1 through 4. The time which I will gain by means of such omission I propose to utilize in order to comment upon some items of the prosecution's plea. What I am going to do will be merely to confine myself to legal questions, and I will leave it up to my reply brief to answer erroneous elements of facts contained in the prosecution's closing statement.

I will now take up on page 4, under II, if Your Honors please.

The prosecution charges the defendant Keppler with crimes against peace.

The following are the findings of the IMT concerning this charge:[4]

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[1] Quotation from an affidavit of Bishop Berggrav (Weizsaecker 2, Weizsaecker Ex. 6).

[2] Complete closing statement is recorded in mimeographed transcript, 12 November 1948, pages 27401–27460. All of the closing statements with respect to the aggressive war count are reproduced here. The opening statement for the defendant Keppler is reproduced in section V, Volume XII.

[3] Dr. Schubert refers to the fact that a mimeographed translation of his "final plea," or closing statement was given to the Tribunal before the closing statement was delivered in open Court. This was a general practice in the Nuernberg trials subsequent to the IMT.

[4] Trial of the Major War Criminals, op. cit. supra, volume I, page 186.

"The charges in the indictment that the defendants planned and waged aggressive wars are charges of the utmost gravity * * * . To initiate a war of aggression * * * is not only an international crime; it is the supreme international crime * * *."

I have made the above quotation in order to stress the extreme seriousness which the IMT applied in beginning their investigations on this count, whereas the prosecution in this case charges all defendants except four with crimes against peace, in a mechanically arbitrary manner. This charge involves guilt for the deaths of millions of men, for the annihilation of immeasurable property and the welfare of whole nations, for disaster, distress, starvation, and illness, and perhaps for the decline of western civilization which the German philosopher, Oswald Spengler, predicted 30 years ago.

The seriousness of the charge requires particular care in evaluating the evidence. This is even more required in the case of the defendant Keppler who ranked neither among the military leadership nor among leading politicians; who, devoid of any kind of radicalism approached his tasks with sound common sense, a man who was described by witnesses as striving for peaceful adjustment but not for brutal measures.

In paragraphs 8, 14, 15, 16, and 17 of the indictment, the prosecution in the main only charges Keppler with responsibility for the planning and preparation of aggressive wars. His participation in the waging of aggressive wars was only alleged in paragraph 22 in connection with Keppler's activity in the Foreign Office during the war, and under that item he is alleged to have participated in the political development and administration of occupied territories. This last point is of minor importance, as a matter of fact. We postpone its treatment for a later phase.

Keppler is also charged with conspiracy for the committing of crimes against peace. There is no essential difference between "planning, preparation, and initiation" of aggressive wars and a conspiracy for the committing of such acts, although the prosecution treated these facts under two different counts—one and two. Judge Anderson, president of the Tribunal trying Krupp, in his concurring opinion stated the following with respect to the findings of the Court under counts one and four of the indictment of the Krupp case:*

"In my opinion, 'planning, preparation, and initiation' as these words are used in the London Charter and Control Council Law No. 10 are in practical effect the same as a conspiracy to wage war."

* United States *vs.* Alfried Krupp, et al., Case 10, section VI H, Volume IX, this series.

The same opinion was voiced in the judgment in the Farben case, and the IMT, too, treated these two counts in common. I therefore deem it expedient and time saving to follow the same procedure in my brief.

The following of Keppler's activities are alleged by the prosecution to constitute crimes against peace:

(1) Collaboration with the Four Year Plan, not in his capacity as Plenipotentiary for Economy or Hitler's Plenipotentiary for Raw Materials, nor in his capacity as president of the Reich Office for Soil Research, so that these activities are probably not charged under counts one and two of the indictment;

(2) His participation in expropriation measures concerning Jewish and other persons' property;

(3) His attitude in foreign politics, concerning Austria, Slovakia, and Poland.

A short interpolation, if Your Honors please:

In the prosecution's closing statement it was pointed out that actions which up to now were only indicted under the title of "robbery and spoliation" or "slave labor" are also liable to punishment under the aspects of waging of aggressive war. I do not consider that to be permissible. The prosecution should have made up its mind previous to tendering its indictment.* But now, after the termination of the case in chief, it is not permissible to use the elements of fact which form the basis of a very specific count of the indictment and transfer these very same elements of fact to a different count of the indictment, because by so doing the defense would be deprived of the possibility to introduce the necessary evidence in retaliation to the now changed aspects of the count of the indictment.

Now, continuing—

What facts have transpired actually in the case in chief?

Keppler had been one of Hitler's followers since 1927. He established contact with him in the economic field, in particular with respect to social problems which Keppler had solved in his Eberbach plant in a new and original manner. As late as 1932 did the contact between the two men become closer when Keppler on Hitler's request undertook the task of advising him on economic questions which in view of the unprecedented economic depres-

* The indictment (par. 23, count one) states: "In addition to the acts and conduct of the defendant set forth above, the participation of the defendants in planning, preparation, initiation, and waging of wars of aggression and invasions of other countries included the acts and conduct set forth in counts three to seven, inclusive, of this indictment, which acts and conduct were committed as an integral part of the planning, preparation, initiation, and waging of wars of aggression and invasions of other countries. The allegations, made in said counts three to seven are hereby incorporated in this count." A similar charge was made in the indictment in the I. G. Farben case in which Dr. Schubert was counsel for the defendant Buergin. (United States *vs.* Carl Krauch, et al., Case 6, Vols. VII and VIII, this series.)

sion prevailing in Germany at that time, were lying at the center of interest. Keppler resigned from his well established professional career, for the purpose of helping Hitler. This did not involve any financial or selfish motives on his part.

When Hitler came to power, it went without saying that Keppler continued his previous activities, and in addition had to take over new tasks in view of the changed and increased field of work done by Hitler. In July 1933 he was officially appointed Plenipotentiary of the Fuehrer and Reich Chancellor for Economic Questions. His official place of office was at the Reich Chancellery. Keppler at that time, and also later on, refused to accept the offer to become Reich Economics Minister, inasmuch as he, both for factual reasons and for reasons of his state of health, did not want a too extensive field of work, and in particular he did not want to be incorporated in a large bureaucratic government machinery.

In his capacity as Plenipotentiary for Economy [Wirtschaftsbeauftragter] he was a kind of liaison official between Hitler and the Ministries in charge of economic questions, that is, particularly with the Reich Ministry of Economics, the Reich Ministry of Labor, and the Reich Transportation Ministry. At that time, all domestic problems in Germany were overshadowed by the problem of reducing unemployment, and this was therefore also Keppler's main task. He furthermore strived for a just adjustment of social tensions by participating in the preparatory work on the Law for the Regulation of National Labor.

In 1934 the lack of foreign exchange which had been in existence since the bank crisis in 1931 became more and more crucial so that German raw material imports became acutely endangered thus, as a natural consequence, jeopardizing all successes that had been attained in the field of work procurement. Toward the end of 1934, Hitler ordered Keppler to initiate measures for the alleviation of the shortage of foreign currency and raw materials. Keppler jumped at this task with great vigor and paved the ground particularly in the field of artificial textiles, synthetic gasoline, synthetic rubber, and the utilization of low-grade iron ores; he carried on research work, and created a few new plants by taking up Reich guaranties. He did so without establishing a large administrative machinery; his whole raw materials office never exceeded 25 employees.

The significance of economic problems which had resulted in Keppler's appointment as Plenipotentiary for Raw Materials, increased as years went by. In spring 1936 Goering was appointed Raw Materials and Foreign Exchange Commissioner. This did not affect Keppler's position directly at the outset. How-

ever, it suffered a basic change when the Four Year Plan was introduced. The position of Hitler's Plenipotentiary for Economy was declared to be unjustified, and out of his extensive assignment on raw material questions Keppler retained nothing but the field of industrial fats and soil research connected with a number of vociferous titles as "Expert General" and "Goering's Personal Consultant." Keppler himself calls these decisive changes a "first class funeral."

The two most powerful men in the field of German economic policy at the time were Goering and Schacht. For various reasons, Keppler was not on the best of terms with either of them. This, of necessity, led to his elimination. From October 1936 on Keppler ceased to play a leading role in the economic field. In 1938 he left the Four Year Plan altogether, and from 1938 onward, he became president of the Reich Office for Soil Research which as an office was subordinated to the Reich Minister of Economics.

In the same degree in which Keppler was replaced by Goering on the economic sector, his relationship to Hitler changed. In 1933–1934 he frequently visited Hitler and had unlimited access to him; however, he only made use of this privilege in absolutely necessary cases; this changed as early as 1935, and in later years Keppler had no priority over other functionaries in his access to Hitler. The witness, Kromer gives a very illustrative description of this state of things—*

> "In the year 1934, Keppler very frequently went to report to Hitler. In the course of the year 1935, the visits or the audiences, became more and more rare, and afterwards the situation was such that Keppler had a lot of difficulty to be received by the Fuehrer at all at that time."

He, therefore, did not belong to Hitler's inner circle, he was only called in if and when Hitler believed that he might be used for a special assignment.

Such a special task was assigned to him in 1937 when Hitler entrusted him with the handling of the Austrian political problems within the NSDAP, that is, of the Reich German NSDAP. The meaning of this assignment could be seen from the comments which Hitler gave to him in personal discussions and which are only comprehensible if one recalls the state of affairs at that time between Germany and Austria. Since the foundation of an independent German-Austrian State in 1918, a sincere friendship existed between the two countries, as it is self-understood between

* Testimony of defense witness Karl Kromer is recorded in mimeographed transcript, 10 September 1948, pages 20947–20972.

peoples of the same language and culture, same history, and same attitude. There were also many similarities in their political and economic development, while it has to be said that the rise of the National Socialist movement started in Austria a little later than in Germany. The Austrian Government, at the latest beginning in 1934, also followed a totalitarian course. Contrary to Germany, however, this course emphasized Austrian national and legitimistic principles and was called Austro-fascism. This totalitarian government, during the course of time, separated itself more and more from basis within their own people by forbidding and suppressing all other political parties. Through a flagrant breach of the constitution in 1934, about which there is only one opinion in Austria today, the government tried to stabilize a new order in matters concerning state and society. The measures of suppression of the Austrian Government were directed particularly against the Austrian National Socialists which, in addition to many other things of course, were a severe blow to the so far most friendly relations between Germany and Austria, and which finally led to the fact that the state of affairs between the two countries became most unfriendly. This regrettable situation was supposed to be remedied by an agreement between the two countries, dated 11 July 1936. The assignment, given to Keppler in 1937, consisted of the task to bring about an appeasement between the national opposition in Austria, excluded by the state government, and the government itself, in accordance with the provisions of the July agreement. Part of this national opposition was not only Austrian National Socialists but also many nationalistic thinking people who were not National Socialists. Keppler's first task was the participation in a conference in Vienna in which German and Austrian representatives discussed most of all cultural problems concerning the execution of the agreement of 1936.

This agreement, which was the basic idea for Keppler's work, starts with the following significant words (*TC–022, Pros. Ex. 14*)—*

> "In the conviction that they are making a valuable contribution toward the whole European development in the direction of maintaining the peace * * *."

Keppler's work served the preservation of the outer and inner peace. The execution of this task was not made easy for him, since the leader of the Austrian National Socialists, Captain Leopold, an ambitious man, followed his own political aims and tried to thwart

* Introduced in the IMT trial as Prosecution Exhibit GB–20. The German text is reproduced in Trial of the Major War Criminals, op. cit. supra, volume XXXIX, pages 19 and 20.

Keppler's work for peace. Unfortunately, Keppler's activities were finally unsuccessful. The events took their own course and swept away his quiet work for peace. The conference between Hitler and Schuschnigg, the authoritarian Austrian chief of government, in Berchtesgaden, in which Keppler did not participate, led to the fact that Schuschnigg picked up the gauntlet which Hitler—according to Hornbostel's statement—allegedly flung down at him in Berchtesgaden and on 9 March 1938, announced a plebiscite which did not only represent a violation of the Austrian Constitution but also an open break of the agreement with Germany and a severe affront of the German Reich. The reaction was to be expected. The bomb exploded in Schuschnigg's hands, to use an expression which Mussolini used shortly before in a warning to Schuschnigg.

The decisive day for the history of Austria was 11 March 1938. Different persons submitted to the Austrian Government Hitler's request to postpone the plebiscite and to bring about Schuschnigg's resignation. These requests were only partly complied with. In the afternoon of 11 March 1938 Keppler who had so far not taken part in this political game was given the order by Hitler to fly to Vienna and to try, at the zero hour, to straighten out peacefully the severe conflict. Keppler was supposed to insist on Schuschnigg's resignation. He was not given any definite directives for the creation of a new government; neither did he get the order to submit an ultimatum.

According to the statement made by the former Austrian Federal President Miklas* as a witness and contrary to Keppler's statement, Keppler allegedly threatened Miklas with the invasion of German troops in the form of an ultimatum, in case Miklas did not appoint Seyss-Inquart to the office of Federal Chancellor within a certain time. The testimony of the witness Miklas, however, shows so many inaccuracies and mistakes in decisive points that it can only be regarded as a most doubtful piece of evidence.

I refrain from going into details in this matter within this plea and refer in this connection to my closing brief, in which—based upon the exact time data given in [2949–PS] Prosecution Exhibit 33, the telephone calls between Goering and Vienna—I have proved that the discussions of Miklas with the German Military Attaché Muff and with Keppler did not take place in the sequence Keppler—Muff, as stated by Miklas, but in the sequence Muff—Keppler, as stated by Keppler himself. That Muff submitted an ultimatum to Miklas is admitted by Muff. It is quite understandable that Miklas, a man 76 years of age, now con-

* Miklas, a prosecution witness, was heard in Vienna before Judges Powers and Maguire acting as Commissioners of the Tribunal. The record of this hearing was introduced in evidence as Document NG–5082, Prosecution Exhibit 2724, not reproduced.

nects in his memory the ultimatum, submitted to him by Muff, also with Keppler. In any case it is significant that Miklas, as witness before the Vienna People's Court, in a trial against the former Minister of Finance Neumayer, talks about several ultimata which he received from different people but he never mentions an ultimatum by Keppler. Since Keppler and Miklas were alone at the time of the discussion, the only evidence for the contents of their discussions could be the statement of the two people involved. The statement of the former Federal President Miklas had been proved to be incorrect and false at various points. Keppler, however, could not be proved to make any false statements either in this point or in any other. It is, therefore, self-understood that Keppler's statement should be given preference. This final conclusion also corresponds with the basic principle of Anglo-American criminal law as expressed by Military Tribunal VI with the following words:*

> "If from credible evidence two reasonable inferences may be drawn, one of guilt and the other of innocence, the latter must prevail."

In the rush of the highly dramatic and fast changing events of 11 March 1938 a telephone call also played a part in which Keppler informed Goering during the late hours of the evening that Seyss-Inquart, the future chief of the Austrian Government, had agreed to the publication of a telegram containing the request for the entry of German troops. That Keppler's information has no causal connection with the entry of troops is made sufficiently clear by the prosecution documents according to which the order to advance was already given as early as 2045 hours by Hitler whereas the telephone call took place more than 1 hour afterward. During the hours in question Keppler had repeatedly received reports concerning impending trouble in Austria, particularly in Vienna and Wiener Neustadt. By publishing the telegram he hoped for an abatement of the inflamed feelings and a renunciation of any civil war desires that might flare up, and he actually was right in this respect. The thought of a deliberate falsification of history never occurred to Keppler. His intentions were made abundantly clear by the fact that after everything had remained quiet until midnight, he took an unusual step—he called Berlin in order to ask Hitler to put a stop to the advance. However, Hitler decided that it was too late.

During the following days Keppler gave the new Austrian Government a certain measure of help in formulating the law re-

* United States *vs.* Carl Krauch, et al., Case 6, judgment, Volume VIII, this series.

garding the Anschluss. This Anschluss law was not at all prepared long beforehand. Rather, it was born under the impression of the spontaneous exultation and enthusiasm of the Austrian people, which would have been sorely disappointed if the decisive step, longed for by the majority of the Austrian people for more than 20 years, had not been taken now.

After the Anschluss, Keppler was made Reich Plenipotentiary of Austria by an appointment of the Reich Minister of the Interior and the Plenipotentiary for the Four Year Plan. He attempted to bring about assimilation of conditions in Austria with those in the Reich, which had now become necessary, taking care to preserve Austrian individuality wherever possible. However, in this endeavor he was pushed aside by the much stronger and more ruthless man, the Reich Commissioner Buerckel, who considered Austria as his own personal domain, with the result that Keppler finally resigned and gave up his activities.

Toward the end of the year of 1938, Hitler gave Keppler another assignment in the field of foreign policy. He was to collect information concerning Slovakia, which was a part of Czechoslovakia. The assignment at first was purely an order to collect information. When the political situation became increasingly grave in March 1939, Keppler was sent to Bratislava to keep Hitler informed on the situation in Slovakia; this happened at a time when other persons had already taken a hand in the affairs of Slovakia. This time it was Seyss-Inquart and Buerckel who obviously had political ambitions. Keppler made a short and ineffective visit to the then Minister President Sidor, who had been placed in office by Prague in violation of the autonomous constitution of Slovakia. Keppler did not engage in any other activities. Keppler merely accompanied the subsequent Minister President Tiso, who had come to Vienna through the efforts of the SD, from that city to Berlin and then attended a meeting between Hitler and Tiso. At the time Keppler became acquainted with Tiso, the independence of Slovakia was already a foregone conclusion. Tiso's trip to Berlin took place after the Slovakian Parliament had already been convened for the purpose of voting the declaration of independence and the Government of Prague gave its approval to this session while Tiso was in Berlin. The Prague Government, and with it more than 80 percent of the Czech people, at that time did not attach any value whatsoever to Slovakia remaining a member of the Czechoslovakian State, as was openly admitted by Hacha on 15 March 1939. A few days later Keppler entered upon negotiations in Vienna concerning a treaty of protection and friendship between Slovakia and the Reich.

The prosecution has submitted some documents in connection with the Slovakian episode, from which they have arrived at the conclusion that Keppler had carried out his activities in close connection with the SS and, in particular, with the SD. It concerns correspondence between Himmler and Keppler concerning Keppler's proposal in regard to the promotion of the defendant Veesenmayer in the SS. This correspondence has actually no direct connection with the Slovakian affair. It is only too natural that Keppler on such an occasion described the merits of the parties concerned, in whose behalf he had intervened, in particularly strong terms and that he made exaggerated statements in this respect. Such a document has hardly any probative value, in any case it cannot serve as a basis to bring about Keppler's conviction.

Slovakia was the end of Keppler's activity in the field of foreign policy. The center of his activities shifted more and more to the Reich Office for Soil Research. The prosecution made one more attempt, this time to connect him with the war against Poland; they are, however, not in a position to furnish conclusive proof.

During the war Keppler's main activity was the management of the Reich Office for Soil Research; he had no clearly defined scope of duties in the Foreign Office. For a time he was requested to look after the Indian, Subhad Chandra Bose.

These are the facts from which the prosecution infers the crime of an aggressive war and the conspiracy in this direction.

The IMT has rejected the conception of a general Nazi conspiracy and imposed the following duty upon the Court:*

> "The Tribunal must examine whether a concrete plan to wage war existed and determine the participants in that concrete plan."

The existence of a concrete plan was found by the Court in the four key conferences in the years of 1937 and 1939, none of which were attended by Keppler. Among the eight defendants in the IMT trial, convicted on the grounds of conspiracy, six had been participants in such conferences. The exceptions were Hess and von Ribbentrop, one of whom was Hitler's deputy and the other one his Minister of Foreign Affairs and the promoter of an aggressive foreign policy. It needs no special explanation that Keppler's position and activity bears no comparison to those of these two men.

This allows us to say with certainty that Keppler would not have been sentenced by the IMT for a conspiracy to wage a war of aggression, and thence also not for planning, preparing, and initiating wars of aggression and invasions.

* Trial of the Major War Criminals, op. cit. supra, volume I, page 225.

This becomes perfectly clear if one goes through the list of the fourteen IMT defendants, who had been cleared of the charge of conspiracy, containing such names as Kaltenbrunner, Frank, Frick, Funk, Schacht, Doenitz, Bormann, von Papen, and Seyss-Inquart, persons whose positions were incomparably higher and more influential than Keppler's. Schacht was Reich Minister of Economics and President of the Reich Bank during the same time Keppler functioned as Hitler's economic commissioner and commissioner for raw materials in which capacity he later on played a modest part in the Four Year Plan. Von Papen was German Ambassador in Austria since 1934 and was instrumental in bringing about the conference of Berchtesgaden of 12 February 1938. Seyss-Inquart was the leader of the national opposition in Austria; he was the man that handed Schuschnigg Hitler's first ultimatum of 11 March 1938; he was the first National Socialist Chancellor of Austria and as such signed the Austrian reunion law; and a year later he pursued with Buerckel his own political plans in Slovakia. These defendants, whose activities to some extent were in the same sphere as those of Keppler, whose power and influence however extended far beyond that of Keppler, were cleared by the IMT of the charge of conspiracy and the planning and preparation of wars of aggression. Keppler, too, would not have been found guilty by the IMT under this count.

This becomes still more clear if one makes an examination of the individual acts he is charged with, at first these in the economic sector. Keppler's activity as economic commissioner and commissioner for raw materials had as its aim at first the elimination of unemployment, as is clearly established by the evidence, and later on shortage of raw materials was the decisive motive and not rearmament for a war of aggression. How could it have been possible for a small office with a staff of 25 at the most, including the technical personnel, to bring German industry to such a level as to enable it to carry out economic rearmament plans for an army which had increased its strength from a mere 100,000 men in 1933 to several millions in World War II? To ask this question means to answer it in the negative.

Keppler's position in the Four Year Plan was more than modest, and one must not let oneself be deceived by the high-sounding titles, which were bestowed upon him in compensation for the loss of his former position. In any case the evidence taken has removed the last doubts in this respect. His influence was far below that of Krauch, who was acquitted in the Farben trial. Whether Keppler's activity after 1936 in the fields of industrial fats and soil research may be classified as efforts in the direction

of economic rearmament, I leave undecided. Personally, I do not think so, but let us say now that they served the purposes of rearmament. What is to be inferred.

The IMT has stated: "* * * rearmament of itself is not criminal under the Charter."

And the verdict in the Farben trial states as follows:[1]

> "It is equally obvious that participation in the rearmament of Germany was not a crime on the part of any of the defendants in this case, unless that rearmament was carried out, or participated in, with knowledge that it was a part of a plan or was intended to be used in waging aggressive war. Thus, we come to the question which is decisive of the guilt or innocence of the defendants under counts one and five—the question of knowledge."

Following the verdicts in the Farben and the Krupp cases the contention of a general knowledge on the part of the German nation or of even certain parts thereof cannot be maintained any longer. The prosecution therefore makes special efforts to prove the particular knowledge of Keppler and his colleagues in the Four Year Plan. In this connection they avail themselves of the documents covering some of Goering's rather belligerent speeches in some of the larger meetings and the memorandum of Hitler read by Goering in the meeting of 4 September 1936 which deals with the expansion of the German living space and which closes with the following categorical demand:[2]

> "I. The German armed forces must be ready for combat within 4 years.
>
> "II. The German economy must be mobilized for war within 4 years."

However, even these words cannot be taken as proof of any intentions to wage aggressive wars—in particular, they did not prove the existence of any definite plans such as the plans announced for the first time at the Hossbach conference. One must picture to oneself the general political situation prevailing at that time. Germany was engaged in a violent political dispute with Bolshevist Russia. A civil war was going on in Spain in which the great powers had taken a hand. The political situation in Europe was very grave. Hitler did not miss any opportunity at that time to point out the danger threatening from bolshevism.

He had also pointed out this danger in private conversations with Keppler without, however, mentioning concrete plans for a war of aggression against Russia or against any other state, on

[1] United States *vs.* Carl Krauch, et al., Case 6, judgment, Volume VIII, this series.

[2] Document NI-4955, Prosecution Exhibit 939, reproduced in section VI B, Volume XII, this series.

the contrary, he constantly emphasized his desire for peace also in his conversations with Keppler, and in announcing the Four Year Plan at the Party convention of 1936 he stated in his official speech:

> "The German people however have no other wish than to live in peace and friendship with all those who want the peace and who do not interfere with us in our own country."

Was Keppler to conclude from this that a war of aggression on the part of Germany was impending?

Apart from this, the public in National Socialistic Germany had gotten used by this time to big and violent words, particularly on the part of Goering. It therefore did not surprise any of the participants in his conferences when Goering in his bombastic speeches referred to the inevitability of war with Russia, to the necessity to increase armaments and the categorical requirements to produce iron at all costs. One must not forget that certain circles of industry, particularly the iron producing industry, showed great reluctance in this respect and some of them could not be brought in line at all, and that Goering applied particularly to these latter circles when he frequently—however, only in vague terms—made allusions to the impending war danger, promising to take each and every one to task who would not fall in line. He made deliberate exaggerations in order to achieve his ends; all the participants knew this and consequently did not take his exaggerations too seriously, especially as it was known that Goering personally desired peace. In the verdict of the Farben case such utterances are dealt with in classical brevity and clarity—*

> "During this period, Hitler's subordinates occasionally gave expression to belligerent utterances. But, even these can only by remote inference, formed in retrospect, be connected with a plan for aggressive war."

The Farben verdict contains some statements that *perhaps* it would have been possible for a military expert to conclude from the speed and extent of rearmament that the production exceeded the requirements for mere defensive measures. However, the defendant Keppler cannot be considered a military expert in any way whatsoever; before the First World War he advanced to the rank of a lieutenant in the reserves and after that was unfit for military service for the rest of his life. He had no knowledge whatsoever of the extent of rearmament, as it was kept strictly secret. If such men as Schacht, Krauch, and Krupp had been acquitted

* United States *vs.* Carl Krauch, et al., Case 6, judgment, Volume VIII, this series.

of this charge, who would take it upon himself to find Keppler guilty under this count?

It is altogether beside the point to connect Aryanization measures with the planning and the preparation of wars of aggression, as it was done in count one, paragraph 6, of the indictment. I shall revert to this charge of the prosecution and wish to state here only that the prosecution has been unable to adduce the slightest connection for instance between the Petschek case and rearmament, let alone of a plan to wage aggressive wars.

I now shall examine Keppler's activity in the field of foreign policy. In this respect, the prosecution connects him with the cases of Austria, Czechoslovakia, and Poland. Of these three cases only the one of Poland constitutes a war. The Anschluss of Austria and the occupation of Czechoslovakia was considered by the IMT as "planning and preparing aggressive wars" only in connection with an all-embracing plan allegedly existing according to this Court, for instance, the Anschluss of Austria as a "premeditated aggressive step in furthering the plan to wage aggressive wars against other countries." Since Keppler, however, knew nothing about a plan to wage aggressive wars, he cannot be considered by any means a violator of the peace on the basis of his activities in Austria and Slovakia.

The prosecution seems to take the view that the legal provision constituting a criminal act has been extended in Article II, [paragraph] 1(*a*) of the Control Council Law No. 10 in contrast to the London statute. Whereas the London statute mentions only the "planning, preparation, initiation, or waging of a war of aggression." The Control Council Law, in addition, contains the term of "initiation of invasions of other countries." Does this actually constitute an extension of the legal provisions for a criminal act as to mean that also a bloodless incorporation or annexation of another country shall be considered a criminal act? This question is to be answered in the negative. According to its preamble, the Control Council Law No. 10 is an executory law to the London statute and the Four Power Agreement. As such it has to be kept within the limits of the provisions of these two agreements and must be interpreted accordingly. This has been laid down in convincing terms in the verdicts of the Flick and the Farben cases and the latter comes to the conclusion—*

> "* * * Control Council Law No. 10 cannot be made the basis of a determination of guilt for acts or conduct that would not have been criminal under the law as it existed at the time of the rendition of the judgment by the IMT * * *."

* Ibid.

The judgment in Case 12 states the same in convincing terms.

Invasions of other countries, as defined by Control Council No. 10, are therefore merely another term for aggressive wars, that is to say, invasions are only criminal if conducted by waging war. Austria's Anschluss and the occupation of Czechoslovakia are, since they took place without blood being spilled, not invasions as defined by the Control Council Law.

Here I interpolate—

The prosecution endeavor in their final plea to disprove this position. They point to various portions of the IMT judgment by which they believe that their position becomes justified, and in particular, they point to the fact that in the IMT trial none of the defendants were charged with the Anschluss of Austria as being an invasion or were charged with any aggressive act committed in violation of international agreements or treaties. The latter is true.

As a matter of fact, this Tribunal is being asked for the first time whether the Anschluss of Austria was an aggressive war. However, that is the important thing. This expression may not be blurred by vague conceptions like invasion and aggressive action. It must have been a war and specifically an aggressive war. At no time did the IMT consider the occupation of Austria an aggressive war. It merely saw in it a step on the way to future warlike conquests which had been determined in Hitler's plans.

From the quotation of the prosecution in the case of von Schirach it is quite clear that in the opinion of the IMT the occupation of Austria was a crime only because it took place in pursuance of a common plan of aggression; that is, the occupation of Austria belongs to the crime of conspiracy.

That the occupation of Austria was no war has been unequivocally found in the judgments of Krupp and I. G. Farben. I quote from the latter:*

> "It is also to be observed that this Tribunal * * * further held that the particulars * * * as to property in Austria and the Sudetenland would not constitute war crimes, as the incidents occurred in territory not under the belligerent occupation of Germany.
>
> "We held that as a state of actual warfare had not been shown to exist as to Austria, incorporated into Germany by the Anschluss, or as to the Sudetenland, covered by the Munich Pact, the Hague Regulations never became applicable. * * * The Tribunal is required * * * to apply international law as we find it in the light of jurisdiction which we have under

* Ibid.

Control Council Law No. 10. We may not reach out to assume jurisdiction. Unless the action may be said to constitute a war crime as a violation of the laws and customs of war, we are powerless to consider the charges under our interpretation of Control Council Law No. 10, regardless of how reprehensible conduct in regard to these property acquisitions may have been. The situation is not the same here in view of the limited jurisdiction of this Tribunal, as it would be if, for example, the criminal aspects of these transactions were being examined by an Austrian or other court with a broader jurisdiction."

The prosecution are of the opinion that crimes against the peace exist even when force is used against a conquered enemy and when the latter considers it useless to offer military opposition. Although this opinion, according to the above statements and the preliminary decisions of the IMT and the American Military Tribunals, is incorrect, I want to look into this in the light of the case of Austria. Here military resistance was not left undone because it was useless, but no one would have been found in Austria who would have raised a hand against the brother from the same nation—from the Reich—not because the Austrian people resigned itself to force, but because it desired the annexation and shortly after the invasion it confirmed this by preponderant majority in the free plebiscite held. Even international law cannot overlook the basic principle, *volenti non fit injuria;* consequently, there needs to be examined nothing else except whether Keppler planned and prepared aggressive war against these two countries, Austria and Czechoslovakia.

In the case of Austria, Keppler's activities were not aimed at war but to preserve peace—external peace as defined by the preamble to the agreement of 11 July 1936, as well as Austria's domestic peace—by striving for a *rapprochement* of the two opponents, the government and the national opposition. The prosecution presented the defense with a wealth of material by introducing a large number of documents which go to show that Keppler was engaged in constant arguments with Leopold. And why did these two men fight each other? Because Keppler wanted a peaceful settlement of differences, a calm and peaceable development, an evolution, whereas Leopold wished for a fight, an upheaval, a bloody dispute, in brief, a revolution.

To the relevant prosecution documents the defense can add a similar wealth of material. Thus, the initially posed question whether Keppler planned an aggressive war against Austria is decided in his favor, and it is entirely indifferent whether the Nazis or the government were illegal in Austria, whether Keppler was kept with or without justification under surveillance by

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the Austrian Police, whether he was permitted to correspond with Seyss-Inquart or not, and any number of other matters which have been discussed at great length in this connection. Regarding the importance of the fantastic Rainer documents,* I prefer not to express any opinion right now, since my closing brief contains detailed information to show that these documents are absolutely valueless as a historic source of information.

On the decisive date of 11 March 1938, Keppler's action also served the cause of peace. The order which he received from Hitler directed him to try at the last moment to settle the serious conflict peacefully, and considering Keppler's attitude toward Hitler, and his, at that time, still unshaken faith in Hitler, it was entirely impossible that he should have deviated from the prescribed way. Even Hitler probably meant it quite sincerely, although he had already sent Seyss-Inquart and Glaise-Horstenau, in the forenoon, to Schuschnigg with an ultimatum; for it was not Hitler, but Goering, who exercised the impelling impetus in the developments leading up to Austria's Anschluss. It was the latter who, on the afternoon of 11 March when Keppler was on the way to Vienna, gave the decisive push to get the slowly moving wheels into high gear, and thus it happened that when Keppler arrived in Vienna he proceeded from a basis which was in fact already superseded. He did not know that General Muff had already applied pressure by threatening Federal President Miklas with a serious military ultimatum, that the Nazis were marching in the streets fraternizing with the State's executive leaders, and that there was taking place, with elementary force, a transfer of Austria's power which, though Keppler desired it in the last analysis, he wanted to see carried out in his own way, slowly, cautiously, step by step, and in amicable agreement with the partner to the negotiations, that is to say, the present Schuschnigg government.

What followed were those days which became an unforgettable event in all participants' lives, days when a nation allied itself with such rejoicing and such unanimity to the new order that even the misgivings of the worst doubters concerning the tactics used were swept aside. When the German Wehrmacht marched in it was not received as an enemy, but with exuberant enthusiasm and with tears of joy. In full arms, the Austrian Army marched together with their German comrades in a great parade, as I have been able to show the Tribunal in a film. Only he who

* Rainer was Gauleiter of Carinthia, one of the states of Austria. The Rainer documents were a report of Rainer to Buerckel, Reich Commissioner in Austria, dated 6 July 1939, concerning developments in Austria before the Anschluss (Doc. 812-PS, Pros. Ex. 15) and a speech of Rainer on 11 March 1942 (Doc. 4005-PS, Pros. Ex. 32) dealing in part with the same subject. These documents are reproduced in part in section VI C, Volume XII.

closes his eyes to the dynamics of history and believes that such events may only unfold in accordance with the paragraphs of obsolete treaties but not in harmony with the political feelings and expressed desires of the nations concerned would describe such an event as aggressive war.

That many an Austrian became deeply disappointed during the following months is surely not the fault of Keppler but of that man, who, "with spurs on his elbows"—as the witness Kehrl described him—provided the occasion for Keppler's early resignation from his Austrian position. That man was Buerckel. With him Keppler could never establish close relations.

Austria's Anschluss was included by the prosecution in the indictment as a breach of the Treaty of Versailles. According to the letter of the Treaty this may be right. It is a generally recognized law, however, that international treaties are subject to the *clausula rebus sic stantibus,* and there cannot be the slightest doubt concerning the fact that conditions in 1938 had superseded the Versailles Treaty—this unpleasant political instrument of the First World War victors—from which the United States, with a clear purpose, kept apart because it did not live up to the humanitarian aims directed at conciliating the nations as envisaged by the great American President Wilson. This was also the view of the statesmen of the big powers representing the United States, Great Britain, and France when they accorded *de facto* and *de jure* recognition to the Anschluss in 1938. The prosecution, as representative of the United States, by charging the Austrian Anschluss as a crime against peace, is thus today put in contradistinction to this recognition.

Just as little as against Austria did Keppler plan or prepare an aggressive war against Czechoslovakia. His activities in this field commenced very much later. In December 1938 Hitler gave him a purely informational order which exclusively referred to Slovakia. The Munich Conference had already taken place and Slovakia had received full autonomy from Prague. This had been for decades the wish of the Slovakian independence movement which encompassed large parts of the Slovakian people.

From the order Keppler received he could not deduce any intentions by Germany's political leadership to wage a military attack against Czechoslovakia in contravention to international law. There is probably no foreign ministry anywhere that would not take an interest in the domestic and foreign conditions of neighboring countries. Keppler's assignment had no other purpose than to procure material concerning the political and economic conditions in Slovakia where he arrived not sooner than on 11 March 1939.

Keppler had no orders to promote or support the Slovakian independence movement. His activities from 11 to 13 March 1939 were merely those of a political observer. The events which led to Slovakia's declaration of independence unfolded without his help. No crime against the peace became evident therefrom.

During cross-examination Keppler admitted no knowledge of aggressive plans, he had—as he expressed himself—gained on 11 March 1939 a certain glimpse that something was in the offing against Czechoslovakia. Every person living in Germany knew this, however, for Goebbels' propaganda machine had set to work just as it did half a year before at the occasion of the Sudeten crisis. Moreover, there approached again the Ides of March, which had significant importance not only in antiquity but especially in the Third Reich, in which connection I wish to recall the promulgation of the general military service law, the military occupation of the Rhineland and Austria's Anschluss. Everybody could easily notice that the events to come would take place within Czechoslovakia's borders. But what would happen nobody knew except those few belonging to the circle of initiates—and Keppler was not one of them. Except for a few vague hints from Hitler, which did not tell more than he could read in steady newspaper variations morning, noon, and night, he was not better informed than any average German; he could have heard—if at all—about the OKW proposals concerning a military ultimatum to Czechoslovakia, not before his return from Bratislava and after the conclusion of his talk with Tiso, hence, at a time when Slovakia's independence had already been a foregone fact without any help from Keppler. Keppler took only a passive part at the highly important conference with Hacha. Although he was permitted to listen to the greetings of the two statesmen, he had to wait, as many times before, outside in the antechamber when the real problems were discussed in individual conferences. Of Goering's threats to destroy Prague he surely did not hear until after the war, and certainly not during the fateful night hours of 14–15 March 1939.

The prosecution would like to prove that Keppler, especially as regards Slovakia, had engaged in underground, fifth column activities; that was the purpose of the reference to Keppler's alleged connections with the SD, and particularly was it the reason for Mr. Kempner, while cross-examining him after his first examination as witness, to ask Keppler about the funds he allegedly spent in order to burst Slovakia into the air. I don't believe that Keppler in particular has those capabilities which would qualify him in special measure to carry out underground work. During his examination he gave impressive testimony of his integrity and

frankness. He had chosen sincerity and veracity as guiding prescripts for his political career. Keppler's obviously modest success in foreign politics, as contrasted with his undeniable accomplishments in the economic and technical fields, is perhaps especially due to these inner feelings and his outward bearing. He was not the man for underground assignments, and Hitler knew well enough that he could not successfully use Keppler for such tasks.

But even assuming the prosecution to be right, what could be deduced therefrom? Nothing at all, as concerns the assumption that a breach of the peace had been committed. Compare the IMT findings in the von Papen case.* Never before was it considered criminal to influence domestic developments in another country through diplomacy or the secret service, and the IMT therefore did not go so far, probably because the counterargument of *tu quoque* would have been too close at hand. There remains, consequently, the case of Poland, where the first real aggressive war was touched off, as determined by the IMT. Keppler's activities were confined, when Ribbentrop inquired, to designate his co-worker Veesenmayer as a suitable person for gathering information in Danzig. That is all. I believe that I may save myself all arguments concerning this count.

Keppler, as member of the Foreign Office, is supposed to have been also connected additionally with the conduct of aggressive wars. The prosecution's evidence is entirely insufficient regarding this charge. If even before the war Keppler had little more to do with the Foreign Office, except to receive there the salary for his various duties, such a state of affairs became still more obviously apparent during the war. He no longer received political assignments from Hitler, as in the case of Austria and Czechoslovakia, and occasionally certain representative duties were conferred upon him, such as when he was charged with personally taking care of Subhas Chandra Bose, an Indian, but this by no means included political activities on Indian matters. In the witness box the defendant Steengracht von Moyland expressed himself somewhat drastically, but well to the point, by saying that he only knew that Keppler represented the Foreign Office at funerals, and just as plain was the defendant Kehrl's description when comparing Keppler's life in Krummhuebel during the last war years with that of an aged farmer living on his pension. To prove its assertions, the prosecution referred exclusively to the so-called "distributor documents," mostly telegrams which also were submitted to Keppler for his information. But it is not proved, indeed not even probable, that Keppler actually received

* Trial of the Major War Criminals, op. cit. supra, volume I, page 325.

this information because of the principal part of his work being devoted to the Reich Office for Soil Research. Not in a single instance could his initials be found on even one of the documents. He never became active nor did he have jurisdiction in the fields concerned. Never did his attitude become the cause for any of the measures mentioned in the documents. This, however, is not sufficient to assume Keppler's participation which, according to American Military Court procedure, must consist at least of a consenting part; because, as has been pointed out with convincing reasons in the Pohl sentence,[1] the expression "consenting part" contains the "element of a positive attitude," it means doubtlessly more than just "not being against it." The prosecution did not prove in a single instance, however, that Keppler showed a positive attitude.

I would like to be permitted, in conclusion of my statement concerning counts one and two, to devote a few more words to Article II, [paragraph] 2(*f*), of Control Council Law No. 10. This provision which, as far as is known, was written into Control Council Law No. 10 upon Russian request would, if accepted literally, stamp every individual holding a superior position in the political, governmental, military, financial, industrial, or economic fields a criminal against peace, irrespective of the type of work he did. Although this provision frequently caused concern to the Nuernberg defense, no practical consequences ensued in even a single instance. On the basis of the IMT judgment the Farben judgment has clearly drawn the distinguishing line, to be sure, below the planners and leaders who have been sentenced by the IMT for breach of the peace, below those persons who were in a position to shape policies, as set forth in Case 11, and above those men, who, as Keppler, merely followed the Fuehrer. I interpolate.

JUDGE MAGUIRE: On the matter of these interpolations, will the Tribunal be furnished with inserts so that we can put them in our argument book or will we be compelled to go to the transcript?

DR. SCHUBERT: I shall try to have them translated and presented to the Tribunal.

In the very interesting discussion between the Tribunal and the prosecution counsel as to who the prosecution actually considered responsible persons on policy level, the prosecution very generally termed the defendants as being such persons, because it is of the opinion that a difference must be made between private citizens as compared with generals subject to channels of command, as were acquitted in the judgments of Cases 6, 10, and 12[2]

[1] United States *vs.* Oswald Pohl, et al., Case 4, judgment, volume V, this series.

[2] United States *vs.* Carl Krauch, et al., Case 6, volumes VII and VIII; United States *vs.* Alfried Krupp, et al., Case 10, volume IX; and United States *vs.* Wilhelm von Leeb, et al., Case 12, volumes X and XI.

on the one hand, and high government officials on the other hand. This definition does not do justice to the viewpoints as expressed in the judgments in Cases 6, 10, and 12. High government officials as a rule are only executives and in each individual case it must be checked how much they actually must be counted among the leaders of their nation as a result of their position and personality. However, Keppler was not one of them, since he was only a State Secretary for Special Assignments and received assignments from case to case. However, in its final plea, the prosecution made him Hitler's deputy. I believe I need lose no words about that.

I consequently arrive at the conclusion that on the basis of prosecution's evidence concerning counts one and two, Keppler is not guilty.

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E. Closing Statement for the Defendant Koerner*

DR. KOCH (counsel for the defendant Koerner) : Mr. President, Your Honors.

First of all, it appears necessary to me for all of the happenings of this trial to be shown jointly in their over-all, causal relation, where they belong. Where do we stand? The answer appears to be a simple one. This is the last Nuernberg trial, the case tried before the IMT being the first of the series. The trials in their entirety have the semblance of a circle which is not closing. Nothing would be a more erroneous view to hold than that one! Inasmuch as the counts of aggressive warfare, spoliation, and slave labor are concerned, the conditions under which the International Military Tribunal operated were utterly different from those of this last trial. The judges of the IMT, as well as the world that heard the judgment they pronounced, were still in a position to believe that the new law which the IMT was endeavoring to establish would become reality and be recognized throughout the world. You, the honorable judges, the defendants you are trying, and we others, are no longer able to believe that. The law administered by the IMT has turned out to have developed into special law, that is, special law applying to those men who were sentenced there. That is not the fault of the International Military Tribunal. The cause is to be found in the conduct of the nations affected by the law administered by the IMT, all of whom slighted it. Who is still going to maintain today that aggressive warfare is prohibited? Who is there who would even only raise the question as to the aggressor in the war now being

* Recorded in mimeographed transcript, 15 November 1948, pages 27563–27606.

waged between Palestine and the Arab States? Who is going to ask who is the aggressor in Indonesia, or whether or not the aid furnished the insurgents in China or in Greece by Soviet Russia represents a prohibited aggression by the Soviet Russians' very own definition as contained in their treaties of 1933? Reality has passed over the IMT judgment since the time it was pronounced. The proper administration of justice demands a corresponding conviction of sentiment and requires a binding character of law—as I have already previously elaborated on in my opening statement.* Even had aggressive warfare been banned at the time the IMT judgment was passed, this is certainly not the case today by virtue of the general usage practiced by the community of nations, either by nations having by their very own actions ignored the ban as pronounced, or by the nations having acquiesced in the violation of the ban by word or action. The same applies to the other principles of law applied by the IMT. Maybe never before were there as many forced laborers as at this very moment in which I address you. The general disregard of the principles of ownership by politics, which is most closely interlinked with the problem as to whether so-called spoliation may or may not be considered a war crime, has rarely in the history of mankind reached its present degree.

All of this implies that the position held by this Tribunal is quite different from that of the IMT. *This Tribunal takes up a very solitary position in an utterly changed world.* At least the identical significance will be attributed to the last of the Nuernberg judgments as was attributed to the first. The IMT judgment has become a piece of history and can never any more have the effect of a precedent, just as little as any other judgment can remain a precedent which was pronounced pursuant to a statute of law that was rescinded. In this connection I will not enter into any discussion of the problem whether, according to the intents of the statute or of the principles of international law, the IMT judgment could ever have had the effect of a precedent at all, and in the same manner I will omit any discussion of a problem already elaborated on by me in a separate brief, that is, the problem as to whether Article X of Ordinance No. 7 is binding or not. *This honorable Tribunal will have to deal with the new law which has meanwhile come into being.* That is the reason for my maintaining that equal significance is to be attributed to the judgment of this Tribunal as to the IMT judgment. The defense counsel were told that the IMT judgment was born out of idealistic motives, in the intent to replace the world of force by a world of justice under law. This concept which, I assume, is

* Reproduced in section V U, Volume XII.

incorporated for you in the very word "Nuernberg," is sufficiently compromised by the fact that Russia was represented in the IMT in the capacity of *judex inhabilis,* that is, a judge who had participated himself in the crime on which he was passing sentence, that is, the attack on Poland. This fact is proved by the secret German-Russian Treaty, the terms of which have meanwhile been published, and I omit mentioning Russia's attack on Finland which led to her expulsion from the League of Nations in 1940. In like manner, everything you witness here in the way of genuine intent is compromised by everything that was done in reality in the world since the end of the war. The effect of this course of development does not exhaust itself merely in the fact that the justice administered by the IMT has become obsolete. If anything is to be saved at all of Nuernberg, it is the belief that there were to be found a few men who gave precedence to justice under law above everything else and who put this principle into actual practice even at a time when its application had the very contrary effect of what the world, the world's prejudices and its habit of thinking, anticipated. This, Your Honors, is the over-all aspect which forms the basis of my considerations of this trial.

Before undertaking to discuss the individual problem of Koerner's case in order to illustrate the inferences which, in my opinion, should be drawn from this basic concept, I propose to discuss, with the brevity imposed upon me by lack of time, some general problems of law which have crept up over and over again in the course of the Nuernberg trials.

In my opening statement I avowed that *only valid international law* may be applied, irrespective of the contents of the Charter or Control Council Law No. 10, and that, according to the principles of law of all civilized nations, the more lenient provision of law must be applied in the event that law should have met with change between the time of perpetration of the deed and the time when judgment is passed. The application of an *ex post facto* law is precluded in this connection, and in order to strengthen my view I appeal to the words pronounced by Military Tribunal V in Case 7,[1] as follows:

> "Anything in excess of existing international law therein contained is a utilization of power and not of law."

Nothing need be added to this, all the less so in view of the fact that in substance Military Tribunal IV in Case 5[2] took the same view.

When are we to gain knowledge of valid international law? General jurisprudence as taught is known, and for its corrobora-

[1] United States *vs.* Wilhelm List, et al., judgment, Volume XI, this series.
[2] United States *vs.* Friedrich Flick, et al., judgment, Volume VI, this series.

tion I refer to Article 38 of the Charter of the International Court of the United Nations. It is set forth therein that common law, as an expression of a general usage recognized as law, is also one of the sources of international law. This is of particular significance for this trial. In the same portion of the text it is stated that earlier judicial findings may only enter into consideration as auxiliary means for the recognition of law. It is from such a preceding judicial finding, that is to say from the IMT judgment, that I am now going to quote one sentence containing a reference of particular significance for the recognition of international law. The IMT stated:*

> "This law is not static, but by continual adaptation follows the needs of a changing world."

The happenings of the last years adequately illustrate the extent and the speed with which the world is changing, and it is the natural duty of the Tribunal to adjust itself to these changes and to verify the true contents of international law at the time judgment is passed.

I can only cursorily mention the grave misgivings existing in opposition to the concept of the IMT concerning the contents of law valid at the time it pronounced its judgment. As you know, the IMT was of the opinion that, under valid international law, the individual as such also has commitments toward international law and is liable under international criminal law. The subsequent Nuernberg Military Tribunals took over this point of view. As opposed to that, there is to be said that up to the present time all states are guarding their sovereignty more jealously than ever before and that obviously the full sovereignty of the individual state is incompatible with any direct liability of its citizens. There is no state, as yet, that acknowledges the precedence of international law over its internal national law and, up to now, the Constitution of the United States, which specifically establishes the precedence of national law, has not yet been amended in that point. Jurisprudence of all countries is uniformly of the same point of view, [Justice] Jackson [jurisprudence] possibly being the sole exception. As far as I am concerned, it seems to me of particular significance that the competent commission of the United Nations decided not to formulate the Nuernberg principles, and that, as yet, the United Nations have failed to set up an international tribunal having jurisdiction to try crimes under international law. As a matter of fact, two of the creators of the London Charter, that is, Britain and the Soviet Union, have opposed the setting up of such a tribunal. In the face of these

* Trial of the Major War Criminals, op. cit. supra, volume I, page 221.

facts it becomes difficult to understand that the liability of the individual citizen for violation of international law is to be representative of valid international law. It seems to me that Jackson is wrong in maintaining that, in any case, the Nuernberg principles today have the effect of law. In reality, international law is still nothing but law existing in relations between the nations.

[Recess]

DR. KOCH: I had just said—This suffers no change whatsoever as a result of the fact that, under international law in effect up to now, in individual cases citizens may be held liable directly. For what is involved are very specific and sharply defined exceptional elements of crime, as, for example, piracy or partisan warfare. The case of *ex parte Quirin,* also referred to in Nuernberg jurisdiction, is one which was always subordinate to national jurisdiction, that is, the case of espionage, and in view of that it by no means proves the general validity of the principle of individual liability for violations of international law.

I will confine myself to giving a slight indication only of the unbearable conflict in which an individual is engaged who simultaneously is bound to obey international law as well as the law of his own country. Because the case is either that of the individual obeying the laws of his own country, subsequently to be held liable for doing so, like the defendants in this trial, or he obeys what he considers to be international law, for the doing of which he is later on, of necessity, abandoned by the community of nations, whose laws he obeyed, to the power of criminal prosecution held by his own country. The United States does not permit the individual to refuse to obey the laws of his country on these grounds; see the well known judgment of the Supreme Court versus Mackintosh. *Protego ergo obligo*—only one offering protection may impose commitment. The community of nations is unable to offer protection, least of all during war. Therefore, it was right to say, as has been said, that the Charter and the IMT undertook the second step before the first had been made. First of all, you must have a community under international law, which is capable of commanding and protecting, and only after it has been established may the individual be expected to obey this community under international law. It is instructive and, it seems to me, convincing to observe that since the IMT judgment was passed, nowhere throughout the wide world has the attempt been made to prosecute any person guilty of one of the crimes established as liable for punishment by the Charter and Control Council Law No. 10. There has certainly been no lack of perpe-

trators of these crimes since 1945. I do not think I have to substantiate this fact by evidence, but may assume this to be known to the Tribunal.

I have previously touched upon a further problem which is of fundamental significance for the judgment to be passed by this honorable Tribunal. I shall deal with it in greater detail in a special brief. I am referring to the question of the independence of this Tribunal from the IMT judgment. At this point I would confine myself to pointing out that precedents are nonexisting in international law and that the Court of the League of Nations, as well as that of the United Nations, both specifically precluded the effect of precedents in their charters. In both the respective charters it reads as follows:

> "* * * decision of the court has no binding force except between the parties and in respect of the particular case * * *."

The Charter of the International Court of the United Nations, in enumerating the sources of law for international law, under special reserve of Article 59, specifies earlier judicial findings as being only an *auxiliary means* supporting the findings of the Tribunal, but not as representing precedent cases. In addition to this, Jackson's statement of 4 December 1945* to the IMT has to be borne in mind, to the effect that, in part, a military tribunal was set up in the place of the usual criminal court of justice—

> "* * * in order to avoid creating any effect of precedent by what is happening here pursuant to our own law, as well as to escape the compelling force of precedents which would arise if we were faced here by a tribunal of the usual type."

Article 10 of Ordinance No. 7 does not change anything in this respect, for the American Military Government is obviously not in a position to amend international law which does not know the compelling force of precedents. I shall comment on that subsequently.

Please, let me add some facts in this connection. In their final plea the prosecution refers to that Article 10 with respect to the defense assertion that the Russian campaign both from historical and [court] procedural points of views, had not been a war of aggression. The findings of the IMT that the Russian campaign was a war of aggression should be binding for this trial, too. In their opening statement and final plea the prosecution especially

* Mr. Justice Jackson's statement was made to the International Military Tribunal on 14 December 1945. He stated (Trial of the Major War Criminals, op. cit. supra, vol. III, p. 543):

"One of the reasons this was a military tribunal, instead of an ordinary court of law, was in order to avoid the precedent-creating effect of what is done here on our own law and the precedent control which would exist if this were an ordinary judicial body."

stressed their love of truth. Why do they here refer to an ordinance [Ordinance No. 7], maybe with a view to hamper the finding of the truth? According to the will of the prosecution the IMT's statement on an historical event shall not be subject to reexamination. That which the IMT on the strength of its then examination thought to establish, shall never be subject to reexamination. Besides, it is the same IMT of which the prosecution in their final plea state that but a small fraction of the evidence, as compared to that introduced in this trial, had been submitted to it then. If these Tribunals are said to be a source of history as was stated by the prosecution it must be permitted to penetrate to the very sources and also to appreciate these sources which are novel ones, and if the prosecution intends to furnish a standard for a "scientific inquiry" as they maintain, they ought to recollect that science, above all, is not hypothetical. It is altogether alien to the scientific way of thinking to force truth into a Procrustean. What the prosecution is doing by invoking the IMT can neither be called history nor jurisprudence but a kind of orthodox theology whereby the heretic is damned from the very outset. It is only the prosecution that claims infallibility for themselves, and it is they who stigmatize as heresy anything that fails to conform with the IMT's professional faith, a Tribunal which was likewise made up by human beings only, and disposed of means of perception the limitation of which the prosecution themselves emphasize today. Needless to point out again, that this has nothing to do with administration of justice or even only with the rules of procedure of any civilized nations, if one wants to bind defendants by an administration ordinance such as is represented by Ordinance No. 7 to findings arrived at during different proceedings against different defendants.

Aggressive War

I shall now deal with the various elements of Koerner's case. First of all, with aggressive war. In the light of the evidence my client Koerner could only be connected, if at all, with the so-called aggressive war against Russia. I could therefore confine myself to dealing only with this war. In dealing with this war I could again confine myself to pointing out that my client is no way criminally connected with the preparation or waging of this war. The charge of having contributed to the initiation of the Second World War is so grave, however, that I am compelled to comment in general terms on the criminality of aggressive wars, including the question whether the Russian war was an aggressive war at all within the meaning of international law.

1. The defendants in this case can only be punished for planning, preparing, and waging aggressive wars if these acts at the time of their commission were criminal and if aggressive war is still criminal today. Both prerequisites do not exist.

At the time Poland and Russia were attacked, the view that individuals were to be criminally liable for an aggressive war conducted by their countries had never been enunciated. As far as can be ascertained no reference was ever made to penalties attached to aggressive war throughout the war, whereas punishment for war crimes and crimes against humanity had been proclaimed by the Allies ever since 1941. The Moscow Declaration of 1943, which the authors of the Charter considered so important as to make it an integral part of the London Agreement, does not contain a single word of aggressive war. It is mentioned for the first time in June 1945 after the end of the war to the initiation of which it refers in the report made by Jackson to the President of the United States. The inclusion of aggressive war as a crime in the London Agreement and thus in the Charter and Control Council Law No. 10 dates back to the recommendation of Professor Trainin, the representative of Soviet Russia in London. Soviet Russia attacked Poland in the fall of 1939 and waged an aggressive war against Finland in the winter of 1939–1940. The nations assembled in London knew that. The concept of *judex inhabilis* is well known. Russia was a *legislator inhabilis,* a legislator who is himself a perpetrator demanding the issuance of an *ex post facto* law to punish his accomplices. It can hardly be assumed that such a legislator is actuated by the wish to enforce law; it is rather to be assumed that his action is dictated by political expediency. The intervention of the *legislator inhabilis* is the proper origin of the codification of the crime of aggressive war. Accordingly it seems to be a fact that until after the end of the Second World War, the term "aggressive war" had not become a firmly fixed concept within the legal thinking of the nations, let alone at the time the aggressions took place.

At the time this Tribunal will have to pronounce judgment, at least three wars are being conducted—in Palestine, Indonesia, and in China. In each of the three wars there must needs be an aggressor, but no one demands or even thinks of demanding his punishment. I do not think that this is pure chance nor a mere omission, but the expression of a true conviction as to the law. If aggressive wars were considered criminal then the whole world, after the experiences of the Second World War, would be unanimous in their demand to punish the new offenders. But the world

is silent; aggressive wars are not yet criminal. Jackson stated, to be sure, in 1941:*

* Speech at the Annual Meeting of the American Bar Association in Indianapolis on 2 October 1941. Quoted from "World Organization and Present Day Problems of International Law," by Meyer in the Review, "Wandlung," 1948, page 52.

> "Movement, progress, and readjustment will not be renounced by the world as the price of peace. Whenever there is no chance, apart from war, of escaping the burden of the status quo, we shall have war. And perhaps if it is the only way out, we ought to have war." [Translated from the German version.]

That is correct and will remain so until a supra-national sovereignty will afford an opportunity of eliminating the causes of wars. May I refer to Edward W. Carr, who said, in his Conditions of Peace:*

> "War is, at present, the most purposeful of our social institutions, and we shall make no progress tending to eliminate it until we recognize the essential social function it performs and provide a substitute for it." [Translated from the German version.]

I believe, therefore, that we have no alternative today but to affirm the legal status prevailing today that aggressive wars are not criminal, or at least that they are no longer so, as I emphasized before. I have already pointed out that the London Agreement, the London Charter, and Law No. 10 are irrelevant if international law is at variance with them. That there could be no more lofty objective than to eliminate wars from the life of the nations is a completely different issue. The path to be traveled does not, however, go via a special criminal law for individuals but through a limitation of state sovereignty.

2. Regarding the Russian war, the evidence has established the correctness of my contention that this war was not a criminal, aggressive war, even under the London Agreement or Law No. 10, but a preventive war to counter an impending Russian attack. Hitler only decided upon war against Russia when he had convinced himself of the seriousness and imminence of the threat implied in the Russian deployment of forces in 1940, and in the aggressive Russian policy. My document book 2 with its supplements, which is devoted exclusively to this topic, speaks for itself.

The Russian line-up of forces in May 1941, that is, 4 to 6 weeks before the outbreak of hostilities, is well known. This line-up

* Carr, Edward W., Conditions of Peace (MacMillan Company, New York 1942), pages 116 and 117.

was not in the nature of a defensive deployment against the German Army which had meanwhile also been assembled, but clearly shows the characteristics of an aggressive deployment. This aggressive nature is confirmed by two such expert witnesses as Generals Halder[1] and Hoth.[2] I think that the entire evidence is so weighty that in this plea of mine I may proceed from the actual position as being such that a Russian attack was imminent and that Hitler feared this attack.

What is the legal position under these conditions? It has always been recognized that there is a necessity under international laws which is paramount to all other laws. Vattel, an acknowledged authority, says that a nation is entitled to forestall an injustice and that a wrong is the cause for every just war, whether the wrong has already been inflicted or is imminent. Creasy says very aptly that the real aggressor is not he who first uses force, but he who necessitates the use of force. Evidence that this is universal legal doctrine can be found throughout the literature dealing with international law. I will content myself with quoting Hershey who wrote in 1929, that is, after the conclusion of the Kellogg Pact:

> "The right of self-defense has precedence over all other rights and duties and is much more than a right within the common meaning of this term; it is a principle underlying all positive laws and usages." [Translated from the German version.]

In discussing the question whether the German attack on Norway could be justified as preventive war, the IMT principle affirmed it, and referred to the Caroline case. In the exchange of notes regarding this case, the United States Secretary of State Webster recognized the law of self-defense defining it in terms reiterated by the IMT that there must be,[3]—"* * * necessity of self-defense instant, overwhelming, and leaving no choice of means and no moment for deliberation * * *." [Translated from German version.]

Even these very strict, and in my opinion too narrowly defined conditions attaching to the law of self-defense were met at the time Hitler was confronted by the Russian concentration of forces. The occupation of Rumania which was allied to Germany would alone have been sufficient to render impossible future

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[1] General Franz Halder was chief of the German General Staff until September 1942. His complete testimony is recorded in the mimeographed transcript 8 and 9 September 1948; pages 20393–20403, 20702–20767. Extracts from General Halder's diary and from his testimony in the High Command case are reproduced in several sections of Volumes X and XI, this series, (United States *vs.* Wilhelm von Leeb, et al., Case 12).

[2] Affidavit of General Hermann Hoth, Koerner 142, Koerner Exhibit 107. Hoth was a defendant in the High Command case, Volumes X and XI, this series.

[3] Trial of the Major War Criminals, op. cit. supra, volume I, page 207.

German self-defense because Germany depended on the Rumanian oil fields. The opinion that Nelson's seizure of the Danish Fleet in the port of Copenhagen in 1807 was a legitimate act of self-defense is apparently still being maintained by all Anglo-Saxon writers. If this opinion is correct, then Germany's attack in 1941, which was to forestall a Russian aggression, is certainly no violation of international law.

Roosevelt said in 1942: "When I see a rattlesnake rearing its head, I do not wait for it to strike; I crush it first." [Translated from the German version.]

Nor did the Kellogg Pact preclude preventive wars. The opinion held by the contracting parties is authoritative. The American Ambassador's note, dated 23 June 1928, inviting Germany to accede to the Kellogg Pact, says:

> "There is nothing in the American draft of an anti-war treaty which restricts or impairs in any way the right of self-defense. * * * Every nation * * * alone is competent to decide whether circumstances require recourse to war in self-defense."

A preventive war thus remains legitimate.

The doctrine under international law that only unprovoked aggression is prohibited, whereas a provoked attack allows legitimate self-defense, tends to the same conclusion.

As a result, the German invasion of Russia was not a prohibited aggressive war. The charge against my client lacks any foundation even if, contrary to my opinion, aggressive war were criminal today. Whether the German attack was, objectively speaking, a legitimate act of defense is immaterial. No criminality attaches to it because there is no criminal intent if my client believed and could believe that the German attack and its preparations took place for the purpose of self-defense.

This has been established by the evidence, nor would it be changed if the Tribunal is persuaded by the evidence that Russia had in fact wanted to attack but does not regard it as an established fact that Germany's attack was an act of self-defense. Even in such a case there would be no criminal intent attaching to my client.

3. To decide whether a defendant can be punished for planning, preparation for, or waging of aggressive wars under international law, the primary factor, according to the judgments of the Nuernberg Tribunals, is whether his position was in fact high enough to include him in the circle of those who may be punished under international law. Let me point out how narrowly the IMT fixed the circle of criminal responsibility for aggressive war. Koerner was below that line which the Farben judgment in Case

6* referred to: "Some reasonable standard must therefore be found by which to measure the degree of participation necessary to constitute a crime * * *."

Undoubtedly Koerner did not belong to the circle of the architects and leaders of war, but was on a much lower level, below the logical line of division between guilty and innocent. I shall characterize Koerner's actual position at greater length at the end of my closing statement.

4. If, in spite of the evidence, the Tribunal should have some doubts whether Koerner might not be a member of the circle that is criminally liable for the preparation of an aggressive war, there can be no criminal liability on the part of my client for reasons of fact. For the evidence has shown that—

(1) The work of the Four Year Plan did not aim at aggression.

(2) Koerner did not, nor could he, nor was he bound, to think of an aggressive war.

(3) Koerner did not actively participate in the preparation of the Russian war.

As for Koerner's participation in the preparation of the Polish war in 1939, the prosecution could not adduce anything but the fact that Koerner was State Secretary of the Four Year Plan and that the jurisdiction of the Four Year Plan also included tasks serving German rearmament.

According to the opinion of the Nuernberg Tribunals established since the IMT judgment against Schacht, rearmament is not criminal in itself. The essential factor is whether whoever participates in rearmament in fact knew of aggressive plans. The prosecution were unable to prove that this was the case with Koerner. Thus, any charge against him is unfounded. The general references of the prosecution to the extent or the speed of armament are completely mistaken. At that time the reasons for rearmament were plausible for every patriotic-minded German. One did not have to think of aggressive war as an explanation. The menace to Germany from her neighbors, particularly in the East, was so strong and had been so sharply felt for a decade and a half that everybody assumed that rearmament was to protect Germany. This is especially true of Koerner because he knew Hitler's memorandum from the summer of 1936, which constitutes the birth certificate proper of the Four Year Plan in which Hitler quite clearly expressed that, in addition to general considerations of economic policy, it was the menacing Russian danger which prompted him to promote such economic measures as were subsequently carried out under the Four Year Plan.

* United States *vs.* Carl Krauch, et al., judgment, Volume VIII, this series.

Apart from that, the idea that Germany might possibly attack neighboring countries was quite alien to my client Koerner whose truly deeply amiable nature, ready for every reasonable compromise, was in no way inclined to violence and injustice.

As against this, the prosecution have laid great stress on the fact that Goering repeatedly made speeches full of war-like phrases. The testimony of the witnesses has shown that these phrases were not to be and were not taken seriously. In addition the evidence has shown that Goering, in truth, was a man who very strongly championed the preservation of peace and that Koerner at any rate was convinced of Goering's peaceful intentions. The IMT, which described him as the driving force behind wars of aggression, is completely mistaken. If there was anyone who was against all wars, and again and again worked for peace, that appears to have been Goering. That is of importance here, for the prosecution apparently infers that my client is incriminated as having been a member of Goering's close associates and a personal friend of his. Goering's conduct remained constant, starting from the Munich Agreement where he was a decisive force in securing the agreement, followed by his disapproval of the invasion of the Protectorate and his peace efforts with Dahlerus, and ending with the dramatic scene described by my client, when testifying in his own behalf, when Goering returned from his visit to Hitler on 31 August 1939. Hitler had communicated to him his final decision to attack Poland and now Goering was sitting despondently in his study, putting his head and his arms on the table, and breaking forth into indignant criticism. Propinquity to Goering does not argue in favor of readiness for war but readiness for peace.

What has been said for the period until 1939 is equally true for the period preceding the beginning of the Russian war. In addition, however, every evidence shows my client did not in fact actively participate in the economic preparation of the Russian war. It was not Koerner but General Thomas who received and carried through Goering's mission to activate an economic organization in the East. The Economic Leadership Staff East, of which Koerner was to be a member, did not start to function until after the beginning of the Russian campaign.

5. I have thus shown that my client cannot be held criminally responsible for German war preparations. The prosecution contend that Koerner is also responsible for the waging of aggressive wars. In this regard only Koerner's functions as a member of the Economic Staff East could possibly be relevant. The evidence has shown that this staff, contrary to its name, was not charged with the conduct of affairs and did not have any power of decision.

Besides, it soon stopped its work. Koerner was only connected with Russia to the extent that Goering's authorities also extended to economy in the East. If the circle of those liable for the preparation and initiation of an aggressive war must be fixed very narrowly, so much more must be the division of those held responsible for its conduct. Only men in top, responsible, leading positions can be considered. Here again the facts are that the actual connection of my client with the economic control of occupied Russia was very loose and his sphere of influence extremely slight. If the IMT acquitted even Speer and Sauckel of the charge of waging aggressive war, then it is idle to discuss whether Koerner, who held an infinitely more humble position, of much less import for the conduct of the war, is to be convicted. His acts certainly do not constitute the waging of aggressive war.

Spoliation

The second charge which the prosecution has raised against my client concerns so-called spoliation. I have already emphasized in my opening statements that the prosecution's designation of spoliation has not been thus defined by the Hague Rules of Land Warfare. In fact, the war-economic utilization of the occupied territories is involved. The nature and extent of this utilization have been described in the presentation of evidence. From the legal point of view it has to be ascertained where contemporary international law draws the limits for the utilization of occupied territories by the occupying power. This basic question has so far not been unambiguously decided by the trials conducted in Nuernberg until now.

The IMT judgment has not discussed in detail the concept of systematic spoliation which it has coined, and there was really no need to do so because it assumed a state of affairs to exist which no longer necessitated the investigation of the admissibility of war economic measures under international law. Thus, the IMT considered it proven that measures were actually taken, as are demanded or enumerated in the infamous Goering speech on 26 August 1942 dealing with the treatment of occupied territories and the equally infamous file note pertaining to a conference of State Secretaries in May 1941, which indicated that in the course of a war against Russia many millions of Russians would have to starve to death as a consequence of German measures. On that basis it was in fact superfluous to entertain considerations as to where war necessity ends and spoliation begins. Apparently the IMT was of the opinion that what it accepted as having been proved was, in any case, beyond this limit. In fact, however, this was not the case as has particularly become evident from the presentation of evidence in this trial.

The industrial trials deal predominantly with the evaluation of individual cases and industrialists who could have had individual interests.* In this trial on the other hand, for the first time since the judgment of the IMT, the *total-economic* process of the utilization of territories occupied by Germany is to be judged on the basis of new actual determinations. This is not the time to give a description of the state of affairs. I shall deal with that subject in my closing brief. On the other hand I shall describe here at least in general outlines the considerations which in my opinion are decisive for the fact, what, according to presently valid international law is permitted for an occupant, and what is forbidden for him. The concept of systematic spoliation does not help us in this respect. The prosecution has failed to explain what it means by it. The IMT did not explain it either. When therefore do we have a *violation of the customs of warfare* which is the prerequisite for the fulfillment of the deed according to the Charter and Article X [Ordinance No. 7]?

I have already stated in my opening statement that in a total war it cannot be prohibited to utilize property if it is permissible to destroy it. The prosecution emphatically attacked this argument, which had also been previously voiced in the Flick and Krupp cases, stating that all barriers would be removed if this argument were to be put into effect. This is obviously incorrect. The defense does not recommend that everything should be permissible, but rather that the line of what is prohibited should be drawn at a different place than was done by the Hague Regulations in the year 1907 in several of its provisions, namely, at the same place for the occupant as for his opponent. Furthermore, the prosecution seems to object to this idea where a *majore ad minus* is assumed, that not a *minus* but an *aliud* is involved. That is also incorrect. The problem consists exclusively of the question as to the extent to which the right of the individual to property has to give way to war necessities and total and economic warfare; and the very same problem is involved in the destruction as well as the utilization or the seizure of property.

Professor Wahl stated in his final plea in Case 6 that warfare of our time is the most inhumane in modern history. Consequently, there cannot be the slightest doubt that the *bombing* of open cities and the firing at individual persons violates the Hague Regulations, and that both would be exemplary samples of crimes against humanity if they were not overshadowed by the necessities of war in the opinion of the victorious as well as that of the van-

* Reference is made to the Flick, I. G. Farben, and Krupp cases (United States *vs.* Friedrich Flick, et al., Vol. VI; United States *vs.* Carl Krauch, et al., Vols. VII and VIII; and United States *vs.* Alfried Krupp, et al., Vol. IX; respectively). In each of these cases findings of guilt were pronounced in connection with the spoliation charge.

quished nations of the Second World War. It is quite immaterial to interpose that the bombing warfare by the Allies was solely a reprisal measure. The decision of the combined General Staffs of the Allies (of 10 June 1943) or "The Combined Bomber Offensive Plan" does not speak in favor of it. The former Chief of the American Air Forces, Spaatz, reports on what considerations this decision was based.[1] Already in January 1943 the heads of the Allied air forces, besides the destruction of the German industrial capacity as the aim of the bombing offensive, had decided on undermining the morale of the German population up to the point where its capability of offering armed resistance would be broken The British Field Marshal Robertson maintained the opinion, already in 1921, that attacks on nonmilitary objectives and on the population would play an outstanding part in the next war.[2] Spaight has expressed himself most clearly in his book "Air Power and War Rights" which has become famous.[3] Spaight stated in 1924 that in future wars the compliance with the basic principle of the inviolability of the civilian population and the private property would be impossible to put into practice, that it would not be adapted to the nature of modern warfare, and that consequently it had become obsolete from the point of view of international law.

Here he quite correctly emphasized that the true aim of the war is of a solely spiritual character. "* * * It is entirely a question of persuading minds and nothing else,"[4] and the means by which the minds are to be persuaded he sees in direct action by the air force against the population. The theories of the Italian General Douhet have become general knowledge. The roots of modern air warfare therefore are based on a change in the views of all civilized nations which arose from new technical possibilities; they are not at all the execution of solely a reprisal measure. In any case, however, aerial warfare *today* is not considered to be a reprisal measure only, but as generally permissible, and that is the decisive factor. For the question to what extent in a total war the individual has to give way to the necessities of war not only with regard to his right to property but also with regard to his right to live; *dive-bomber warfare* is of special importance within the scope of aerial warfare. I have emphasized in my

[1] Foreign Affairs, April 1946.

[2] Robertson, William, From Private to Field Marshal (Boston and New York, Houghton Mifflin Co., 1921), page 351:

"Modern war being largely a matter of war against economic life, it has turned more and more toward the enemies home country, and the old principle of making war only against armies and navies has been consigned to the background. Raids on nonmilitary places may be regarded as barbaric * * * but they are bound to play a prominent part in the next contest, and on a far more extensive scale than in the great war."

[3] Spaight, Air Power and War Rights (Longmans, Green and Co., London, 1924).

[4] Ibid., p. 3.

opening statement that my document books are incomplete. A special deficiency lies in the fact that I did not succeed in time in collecting material on the nature and the large scope of this kind of aerial warfare. Consequently, I can only refer to what has come to the knowledge of the Tribunal, and add from my own conviction that the systematic attacks on peasants in the fields, children on their way to school, trains transporting people on side tracks, civilians escaping from trains which had been brought to a stop, and many other instances, show with terrifying clarity what today is considered permissible. I would like to add that I, myself, have been an aviator in two wars, and that I am able to judge that the targets in such attacks are clearly visible to the aviators, and that these were not mistakes but clearly intentional acts. Aerial warfare, however, only gives us a partial view of modern warfare. The first, almost decisive step in the direction of the new form of the warfare was the *expansion of the sea blockade* which arose from the fact that everything vitally needed by the population of the blockaded country was included in the list of contrabands.

Thus, the difference between combatants and noncombatants, which up to that time had ruled the continental customs of war and also the provisions of the Hague Regulations had already been removed. It is also Lauterpacht's opinion that already hereby the change in the nature of warfare has become apparent. The sea blockade is part of *economic war,* which gradually is reaching the same status as the war of arms. A further part of the economic war is the confiscation of private property which took place for the first time in the First World War, namely by England, and subsequently also by the United States. The characteristics of all these developments are always the same; namely, the receding into the background of any considerations for the individual, the noncombatant as the combatant, in favor of achieving the aim of the war. Spaight says in his afore-mentioned book* that the aerial warfare as he demands it and as it has become reality in the Second World War would beyond a doubt constitute a violation of international law. Here he refers to international law in the form in which it existed at that time, especially in the Hague Regulations. He adds that "if one stopped there, one would leave air power unsatisfied. It is necessary that international law should show itself ready to move with the times, to be practical, transient, conciliatory, in the face of new conditions; not precise, pedantic, obstructive." The most important voice from the Anglo-Saxon world with regard the whole problem is again *Lauterpacht,* who says with regard to

* Spaight, J. M., Air Power and War Rights, op. cit. supra, page 19.

the limitation of the war to the armed forces and to the state as the sole partner in the conduct of the war in his article from which I have just quoted, that this is a *theory,* which had become *utterly divorced from the realities of modern warfare.* An actual change had begun long before the World War. No account of it was taken in the numerous provisions of the Hague Convention conceived in an *atmosphere of unreality which surrounded much of the work of the Hague Conferences.*

Here also reference is, above all, made to the Hague Rules of Land Warfare, which the prosecution wants to apply 40 years after its existence in a completely changed world according to its old formulation, and which the IMT in part has also made the basis of its judgment. In fact, however, as these quotations show, there is as little doubt in theory as in practice that through the change of modern warfare the protection of private property, contrary to all rules which were formerly set up, has been placed into the background behind the necessities of warfare, no matter whether an armed conflict or an economic war is involved.

With regard to the conclusions, which can be drawn from this for the charge of spoliation in this trial, my own opinion merely goes to the effect that the occupying power must be allowed to do whatever the rules and practice permit the opponent of the occupying power to do in the air, on the sea, and on the ground. The occupying power is allowed to fight the economic war, whose actual nature is the interference within the sphere of the individual and especially also within private property with all means, which also interfere more deeply with the private sphere than was earlier considered permissible. If the rule of the inviolability of the enemy civilian population and the enemy private property has been broken, then it does not correspond to international law to demand from Germany alone the strict adherence to rules which were set up in a different historical period of time. The discrepancy becomes even clearer if one visualizes that the so-called spoliation constituted acts in territories which the Allies themselves, in the blockade as well as in aerial warfare, treated as enemy territory. They, on their part, considered themselves entitled, by violating the former customs of war and the Hague Rules for Land Warfare, to intervene with regard to the life and property in these areas. This is the same property which the prosecution is trying to protect so painstakingly. Should the occupying power be prohibited from doing what its enemies are doing at the same time?

If the customs of warfare have changed with regard to the protection of private property through changes in martial practice as well as the legal convictions of the civilized nations, then

the specific articles of the Hague Regulations pertaining to this protection have become obsolete insofar as they contradict these customs. The preamble of the Hague Regulations itself presses the basic principle which has brought about these changes. Here it is stated that the suffering brought about by war is to be mitigated, *in as far as military necessities permit it.* In a war, which is conducted by both sides as a total war, everything demanded by economic warfare is part of the military necessities. This means that according to the basic principle of the Hague Regulations everything is permissible which demands the maintenance and strengthening of the armament economy and the voiding of the consequences of the economic war conducted by the enemy, blockade war, and aerial warfare. This includes the operation or closing down of factories or mines, the confiscation of supplies, and all measures of a similar nature. Even the gaining of property in industrial facilities can be justified from this point of view, if urgent war requirements of an economic nature cannot be met in any other way.

All this is confirmed by the evidence which has been introduced in this trial, especially by Dr. Grube, based on the applicable regulations of the United States Armed Forces on the treatment of occupied territories. This material goes far beyond what was introduced before the IMT and in the industrial trials. For this reason alone a completely new recognition by the Tribunal which has to make the findings is necessary. I do not want to anticipate Dr. Grube in the details, but at least I would like to repeat several main points. The service regulations and instruction books of the United States Army maintain the opinion—

1. The basic principle of *military necessity* has priority over the basic principle of humaneness.

2. The economic capacity of the occupied territory can be utilized for the requirements of the occupation troops as well as for the *furthering of future military operations.* The economy of the occupied territories is not only to be brought into accordance with military necessity, but also into accordance with the national future tasks of the occupying power.

3. The words *"war supplies"* in Article 53, paragraph 2, of the Hague Regulations is to be given a wide interpretation. Everything constitutes war supplies that is directly or indirectly useful for the conduct of the war by the occupant or what may be of use to him.

4. *Private property* can be seized in the case of military necessity. Private property can also be seized in order to prevent it from falling into the hands of the enemy.

5. The limitation of the *requirements of the civilian population* to the minimum necessary for their existence is permissible in the case of military necessity.

If one looks at this matter, then it again becomes evident how far contemporary international law has become separated from

the Hague Regulations. In this aspect we can leave the question open whether the documents only show the contents of contemporary international law, or whether they helped to change international law. Even if one only wanted to attach to these provisions the character of an authentic interpretation of the written or unwritten rules of warfare, then this would have to be obligatory for the Tribunal which views the evidence. This is applicable in the same way when the Tribunal considers itself to be an American Military Commission or an International Tribunal. After all, one must assume that also an international tribunal, if it has been appointed by the American Government and filled with American judges, will recognize these authoritative statements by the American Armed Forces.

Besides that, it is of special significance, not for determining the applicable international law, but for the decision of this trial, that *the defendants cannot be charged with mens rea, insofar as in an obviously excusable mistake* they considered that to be permissible what the American Armed Forces consider to be permissible today. Already for the better reason the decision in any case, will have to be based on the fact, whether, and to what extent, the actions of the defendants went beyond the limits which were set up in these regulations of the United States. The presentation of evidence has shown that this was not the case. The discussion of the individual offenses, with which my client has been charged, would go beyond the time limit of this plea. I therefore shall not go into them in detail, especially since the predominant part of the allegations by the prosecution which have so far been made against my client are at the same time directed against the defendants Pleiger, Kehrl, and Rasche whose defense counsel will go into more detail with regard to these topics of the prosecution.

As to any responsibility of my client according to criminal law it is of decisive importance to consider, in addition to the legal views which I have set forth, and in addition to the actual statements made on the nature and extent of the so-called spoliation acts which have been proved by the presentation of evidence, whether what occurred was caused by Koerner's attitude. As far as spoliation is concerned, this also depends on how Koerner's position in the Four Year Plan and in the Hermann Goering Works is to be judged. I shall deal with that later.

JUDGE MAGUIRE, presiding: Counsel, before you proceed, is it your opinion that under the current state of international law there are no limitations as to the right of an occupying power in its treatment of civilian populations or the use of property?

DR. KOCH: Oh yes. In my opinion there are limitations.

JUDGE MAGUIRE: In your brief or elsewhere do you point out what you think these limitations are?

DR. KOCH: Yes.

JUDGE MAGUIRE: Now, with respect to the rules of—not land warfare but the matter of treatment of populations generally, do you take the position that under current or present inernational law there are any limitations on what can be done to civilian population?

DR. KOCH: Yes.

JUDGE MAGUIRE: And are those stated in your brief?

DR. KOCH: Yes.

JUDGE MAGUIRE: Before you proceed, I might say that I would ask if the prosecution makes any reply argument that they be prepared to present their opinion as to whether or not the rules and regulations of land warfare, and the rules and regulations for the treatment of industries and populations in occupied territories, constitute a declaration of international law or are in accordance with international law.*

All right, Doctor—if you will pardon the interruption.

DR. KOCH: To clarify the matter, let me repeat once more what I said here. I am not of the opinion that there are no limitations. Rather, I am of the opinion that the limit must be drawn at a place different than where the limitation is drawn in the [Hague] Rules of Land Warfare, and in my closing brief or trial brief I shall explain that.

Slave Labor

1. With regard to slave labor I refer, in full extent, to my opening statement where I already dealt with the question of whether or not slave labor is still criminal today. In this connection I am not speaking of inhumanities or crimes connected with the treatment of forced laborers. Of all the evidence relevant to an appraisal of the legal issue I want to single out one matter, that is the fact that even now Control Council Proclamation No. 2 of 20 September 1945 is still valid in Germany, according to which it is permitted to deport Germans for forced labor abroad. The Russians did that to a large extent and are still doing it. As the Tribunal knows, all the Russians did pursuant to a controversy in the Control Council was to invoke the Proclamation and an objection raised had to be dropped. (*Koerner 72, Koerner Ex. 317.*) Only recently, the press spread the news that the Russian occupation authorities conducted new compulsory conscriptions in Saxony for the purpose of assigning labor to the uranium mines which they run themselves. The uranium

* See the rebuttal statement of the prosecution, section XIII J, particularly the part entitled "Limitations on Belligerent Occupation."

mines are hermetically isolated from the outside world. This occurrence which I take it is known to the Court, as well as similar ones, shows that these procedures are not only based on valid laws but are "research work" actually carried into effect. In my opening statement I have already referred to the astonishing fact that in February 1947 the Russians objected to the prohibition of forced labor in the United Nations Commission on Human Rights (*Koerner 507, Koerner Ex. 439.*)

Let me make an interpolation here. On this last fact I state I could find proof only from a newspaper article. It is my hope that Swiss friends of mine will shortly make available to me the original transcript from the United Nations Commission, which will establish the fact which I have here alleged.

It is very difficult to imagine on what grounds deportation to forced labor is to be criminal in Nuernberg if the ruling four major powers in the exercise of their sovereign right declare such deportations from Germany permissible in view of the fact that one of them actively engages in it, without the others being able to interfere, and in addition, the same fourth major power, as a matter of principle takes the view before the forum of the United Nations that forced labor is permissible. Moreover, Germany introduced forced labor under the duress of war, while the occupying powers are practicing or tolerating it as applied to a vanquished Germany after the end of the war. Either forced labor amounts to a violation of a basic human right in which case it is just as much prohibited if applied to the vanquished party after its unconditional surrender and even much more so because a law of this type must particularly find practical observance in the event that the power which ought to be in a position to protect it is no longer in existence, or—as an alternative—forced labor entails no violation of such a basic law, in which event its application during war time does not constitute a crime against humanity. From the point of view of higher ethics I condemn forced labor most severely as being a degradation of men. I have already expressed this in my opening statement. Likewise in my opening statement I expressed the thought that this Tribunal would make an important contribution to the further development of international law if it were to repudiate, on legal grounds, any conviction on the charge of forced labor. I repeat this. There is a great difference between regarding forced labor as abominable on humanitarian grounds and being permitted to punish it on legal grounds. The law valid today and the factual usage of the world do not justify a conviction. If there exists any foundation for future law it is to be found

in adherence to valid law and in the unqualified desire to bring about its realization.

A desire to see justice done with reserves attached to it is truly no such desire at all and lacks every power to set standards and to be binding in effect. The argument that the continuity of the administration of justice, as practised hitherto in Nuernberg, is to remain unimpaired, combined with the intent to pave the way for future law by inflicting penalties, constitutes a reserve of this type. As already set forth by me, the according of priority to future law by setting aside existing valid law does not only not aid but is detrimental to the development of future law. Therefore, I hold that there can be no conviction on the count of forced labor, and I request that everything I have to say on this subject be accepted in the light of this reserve.

2. In addition, by way of anticipating I would like to say the following in regard to the special responsibility of my client. Forced assignment of foreign labor is a matter of absolutely fundamental importance. The prosecution is mistaken if it proposes to hold a man in Koerner's actual position responsible for actions which were quite outside the sphere of his competency. Consequently, the evidence shows that my client does not bear any responsibility for what has happened, and that in those cases in which he came into contact with employment problems the attitude taken by him had no influence whatsoever on what was initiated or carried out by others.

3. I will here elucidate very briefly the purport of the evidence.

First of all, there is the question of the responsibility for the fact that as early as 1940 Poles were allegedly employed as forced labor in German agriculture. The prosecution has not proved—except perhaps in individual cases—that the employment of those Poles actually took place by force; it merely proved that State Secretary Backe had such a plan, which, after initially being opposed by State Secretary Syrup, was then approved by him also. Both State Secretaries were completely independent vis-a-vis State Secretary Koerner. It is not apparent how the discussion in the General Council can make my client responsible for a plan that others were pursuing and for which he himself neither took the initiative nor contributed anything personally. The General Council had no authority to reach decisions, and in this case also it reached no decision. Koerner was not active at all. It has also been ascertained that the systematic forced deportation of foreign workers began only after Sauckel's appointment, which took place in the spring of 1942. Koerner bore no responsibility for Sauckel, who was completely independent. Even in January 1942 one of the chiefs of the Business Group Labor of the Four

Year Plan, who was representing Syrup at the time, recommended, in a decree to the occupied territories, the *preparation* of the measures necessary in the event that the introduction of forced labor should be decided upon. This is proof that still at this date those in the Four Year Plan were proceeding on the assumption that no compulsory recruitment was taking place in the occupied territories. For the Business Group Allocation of Labor, Koerner likewise bore no responsibility.

As chairman of the Aufsichtsrat of the Hermann Goering Works, Koerner had nothing whatsoever to do with questions of the employment of foreign workers. Neither according to German corporate law nor in actual practice did that fall within his province. Moreover, Koerner was chairman of the Aufsichtsrat of the Hermann Goering Works only until the spring of 1942, and it has not been proved that foreign forced labor was employed in German industry during that period.

Likewise, Koerner's functions as member of the Central Planning Board cannot establish criminal responsibility on his part for the compulsory use of foreign manpower. Since the three other members of the Central Planning Board (Reich Minister Speer, Field Marshal Milch, and Minister of Economy Funk) were found guilty because of their activity in the Central Planning Board,* among other things, it at first appears that the fourth member, the defendant Koerner, must also be responsible. Very briefly I should like to sketch the picture of the Central Planning Board that has transpired. The evidence has corroborated every one of the statements I made in my opening statement regarding the Central Planning Board and Koerner's total lack of influence in it. In addition, contrary to the assumption of the IMT, it has become clear that the Central Planning Board was competent neither *de facto* nor *de jure* for the recruitment and employment of manpower, and that it had no authority in this sphere. Sauckel alone was in charge of recruiting manpower, and Sauckel was never subordinate to the Central Planning Board but only to Hitler, until, after a long struggle, Speer, in his capacity as Armaments Minister and without any connection with the Central Planning Board, managed to acquire a certain authority in this domain. So far as any influence was nevertheless exercised, on the occasion of meetings of the Central Planning Board on questions involving the recruitment of labor, that was not action on the part of the Central Planning Board but Speer's affair in his capacity as Armaments Minister, or Field

* Speer and Funk were defendants in the Trial of the Major War Criminals before the International Military Tribunal.

Milch was the only defendant in the case, United States *vs.* Erhard Milch, Case 2, Volume II, this series.

Marshal Milch's affair as Speer's deputy. No decision of the Central Planning Board on labor allocation questions is to be found at all. Perhaps, like Speer and Milch, my client could be held responsible if he had ever taken any personal activity in the matter of forced labor, but in no instance did he do so. Koerner was not even a Bedarfstraeger [requirement bearer]. Since, on the other hand, the group of three men of which the Central Planning Board consisted was never active as such in questions of labor allocation, Koerner cannot be held responsible because he was a member of the Central Planning Board. The evidence presented before the IMT did not make clear the true nature of the Central Planning Board. My contention that this committee was merely an institute of Speer's and that Speer alone, and exclusively, possessed the actual power in it has been proved by the evidence to such a degree that Koerner could not be held criminally responsible even if decisions by the Central Planning Board regarding the employment of forced labor existed, and even if he had taken part in them. Votes were not even cast in the Central Planning Board; they were only orders of Speer's. Moreover, these orders were not directed to Koerner, but to the agencies competent for carrying out the programs; and Koerner was not one of them. It has been shown that the opinion, which even the defense embraced initially, that a committee of three men must, perforce, be a sort of democratic institution in which everyone had his say and in which everyone must have had some influence is completely erroneous. The Central Planning Board was an authoritarian institution, like everything in Hitler's state, and the authority resided in Speer alone, who, to be sure, merely carried out, for the most part, decisions which Hitler had already reached. Koerner was entirely without influence, and I was perfectly accurate in saying, in my opening statement, that here too his behavior in what took place was not even casually conditioned, to say nothing of his bearing any responsibility for what happened. He did not collaborate; objection to the activity of the others would have been as impossible as it would have been fruitless; and the extent of his entire activity was minute. All the known stenographic minutes of the Central Planning Board, embracing thirty-eight meetings of a total of sixty, comprise 2,036 pages. All the statements made by Koerner in these meetings amount to a total of not quite six and a half pages. What is more, these statements deal mostly with unimportant things. His case as member of the Central Planning Board is diametrically antithetical to Speer's and also to Field Marshal Milch's.

Herewith I have concluded my treatment of the individual

facts. My client was much further down the scale in the hierarchy of the Third Reich than the prosecution supposes. *For all* the spheres in which Koerner was active, I shall like to draw the Tribunal's attention, with particular emphasis, to the fact that the evidence has reputed everything that might be construed in any way as responsibility on Koerner's part. *The fact runs through the entire evidence like a red thread that Koerner's position was not even executive, much less leading, but was purely mediatory, and in the domain of the Central Planning Board it was even purely representative in nature.*

Koerner was a State Secretary in the Prussian Ministry of State, and as such was called upon by Goering for the work in the Four Year Plan. In this capacity and position he had much smaller powers than the State Secretaries in the technical Ministries had. They had the right to represent their Ministers to the full extent. They availed themselves of this right. Koerner did not have this right. For Goering personally was the Plenipotentiary for the Four Year Plan. The task had been tailored to fit him solely and alone; he personally possessed the extraordinarily extensive plenipotentiary powers and authority to issue instructions to all agencies of the State and the Party. Goering delegated these powers only to two men, namely, Speer and Sauckel, and this was done on explicit orders from Hitler who made these men his own deputies and subordinated them formally to Goering in order to conceal from the outside world the extent to which, even then, Goering was being deprived of power. In the Four Year Plan, Goering occupied the foreground even more prominently than, in view of his nature, was the case usually. He overshadowed everything and permitted no one, least of all Koerner, autonomous powers outside his own narrow field. Koerner was Goering's deputy only in current business affairs, that is to say, in matters that took place within the framework of decisions already laid down by Goering and which had to be worked out administratively. Thus, practically speaking, Koerner was merely the chief of an administrative office with primarily inner office functions. He himself wished to be no more.

Nor was Koerner the superior of the various plenipotentiary generals, business group chiefs, etc., of the Four Year Plan. They were directly subordinate to Goering, and, *de facto,* were much more influential than Koerner. In the General Council of the Four Year Plan, and later in the Economic Leadership Staff East, Koerner, to be sure, presided as Goering's deputy, but the evidence has substantiated the fact that neither of these two committees had the authority to reach decisions, and that Mr. Koerner

also never reached independent decisions within the framework of these committees in the field of economic policy or in any other field. Rather, simply holding the chair, without other competencies or powers of his own, except that of conducting the proceedings, is a characteristic example of the nature of Koerner's activity, which was primarily administrative and organizational, but not commanding or even initiative. In the Main Trustee Office East also my client was excluded from the channels of command.

With respect to Koerner's position in the Hermann Goering Works I shall show in my closing brief what I have already set forth in my opening statement, namely, that the Aufsichtsrat of a German Aktiengesellschaft, contrary to the regulation under American law, is not an acting and executive organ but merely possesses certain rights of supervision. In addition, according to the statutes of the Hermann Goering Works, Goering himself was, so to speak, the super Aufsichtsrat of the corporation bearing his name. Accordingly, in the Hermann Goering Works, Koerner did not even have the position normally occupied by the chairman of an Aufsichtsrat; here too he was overshadowed by Goering's personality, which was endowed with an altogether extraordinary predominance. He kept everything in his own hands; jealously saw to it that all decisions of any importance were reserved to him personally, decreed everything himself, intervened in everything himself, and arrogated to himself the position of Fuehrer of the Hermann Goering Works, which—in contravention of the provisions of German law—he even had incorporated in the statutes. When, in the spring of 1942, Koerner resigned from the Aufsichtsrat of the Hermann Goering Works, not his least reason for doing so was the way in which Goering kept going over his head, which he no longer found tolerable.

When Koerner's resignation from the Hermann Goering Works had already been decided upon, he was called to the Central Planning Board. I have already expatiated at length on Koerner's activities in the Central Planning Board in connection with the subject of forced labor. But at this time, in order to fit this picture into the over-all framework of Koerner's position, I should like to emphasize one thing. The Central Planning Board was created at a time when Goering was falling into the background, as compared to Speer, in the economic sphere. To a large extent the Four Year Plan had lost its importance. In being called to membership in the Central Planning Board, Koerner was by no means achieving new powers; rather he entered this committee only so that it should not be too apparent to the outside world that Goering had been eliminated. But if

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Goering's position at this time was already weak, how much weaker must Koerner's position have been. Everyone familiar with conditions at that time was perfectly clear on this point, and the evidence has corroborated it just as clearly.

I will say only a few words regarding my client as a person. The Tribunal has heard him testify in his own defense. The Tribunal is also familiar with the documents in which his personality is made manifest. The extreme ideologies of the Party were alien to Mr. Koerner. Where he could help others he did so, and he was not afraid to devote himself wholeheartedly. Like so many in Germany, he believed in the cause he was serving. He also shares with a great many others the fact that he remained on the periphery of the events that constituted his and the world's fate, and that he never reached a position in which he himself could exercise any influence on these events. Seen from this aspect, Koerner's case is unimportant, and at the same time it is important because it reflects what was, apart from the outward appearance of his position, the fate of the majority. He too was caught up in vastly powerful occurrences that swept all before them, and that, both internally and externally, left infinitely less scope for personal decisions than may appear to be the case today.

[Recess]

Before the recess I had stated how much less scope there was for personal decisions, than may appear to be the case today. I now conclude.

I shall deal with a number of questions only in my closing brief, that is the question of the necessity and the legal implications in acting on orders. In conclusion, I return to what I said at the beginning of my presentation. I stress the fact that I am not speaking of the principle of *tu quoque,* but of a change in international law. Therefore, in this connection I do not speak of events that are merely infractions of international law and can neither effect a change nor be cited for purposes of exegesis. Jackson said, before the IMT:* "Let me state this clearly: this law, * * * if it is to be of avail, must condemn aggression on the part of every other nation, not excepting those sitting here in judgment." *Indeed, universality of law is inseparable from valid international law.* Jackson's successor as Chief of Counsel of the United States in Nuernberg, General Taylor,

* Mr. Justice Jackson, in the opening statement of the prosecution before the International Military Tribunal on 21 November 1945, stated (Trial of the Major War Criminals, op. cit. supra, vol. II, p. 154):

"And let me make clear that while this law is first applied against German aggressors, the law includes, and if it is to serve a useful purpose it must condemn aggression by other nations, including those which sit here now in judgment."

spoke on 28 July 1947 before the Fifth International Judicial Congress in Geneva and demanded the establishment of a permanent world court to promulgate an international legal code. For, he said, international penal law is now being applied to the citizens of the defeated Axis countries, and he continued, (*Koerner 182, Koerner Ex. 205*) "The trials of war criminals, and the principles on which they are based will be *stultified* by failure to *universalize* these principles and their attendant sanctions." This shows that General Taylor too adopts the position that the Nuernberg principles either must be universally valid, or are not valid at all. They have not become universal; consequently, they no longer possess binding force, if they ever had it. What General Taylor feared has taken place, and that is what is at issue here. To be sure, these principles have not become ridiculous, since they are principles of an eternal nature, which some day will be victorious over all obstacles. But Nuernberg's aim, "to build a new world of just law," has not so far been achieved, and this fact must be faced. The conclusion to be drawn from this can only be that we must adhere to law as it is, and no longer apply legal principles that are in reality not legal principles at all, but postulates. If that is done Nuernberg will conclude with a judgment borne of respect for the binding force of law, and thus with an affirmation of lawfulness in an unlawful world. The prosecution is attempting to seclude the Tribunal from the world today. Nuernberg is to remain an island. I recommend that this high Tribunal thrust aside that which separates it from the reality of our present day. To be sure, a large part of the material submitted in this proceedings will become immaterial for many decisions including the judgment. I request, namely the acquittal of my client Koerner.

F. Extracts from Closing Statement for the Defendant Pleiger*

DR. SERVATIUS (counsel for the defendant Pleiger): Mr. President, Your Honors! The gravest though not the most dangerous charge leveled against my client is participation in the planning, preparation, and waging of a war of aggression, which is the source of all the other miseries in war.

The IMT defines the waging of a war of aggression by the fact of initiating armed conflict.

The IMT refused to enter upon the causes leading to armed conflict. It did not examine whether the security of the country

* Complete closing statement is recorded in mimeographed transcript, 15 November 1948, pages 27607–27654. The opening statement for defendant Pleiger is reproduced in section V, Volume XII. Pleiger's final statement to the Tribunal is reproduced in section XIV, this volume.

or a preceding economic struggle had created such a state of necessity for the country that war was justified as necessary defense for the preservation of the existence of the country.

Thus, the IMT tolerated no discussion of the consequences of the Treaty of Versailles as the cause for the Second World War. The archives of the countries participating in the war remained closed.

War is revolution in the life of a people. Both war and revolution are, as an attack on the existing order, prohibited by those who profit by it; but both remain as fundamental rights.

The result of the conflict provides occasion for the decision whether the conflict was a base outrage or a hallowed deed. Thus, a discussion of just cause is precluded.

Thus, the position adopted by the IMT limits, in a decisive way, the concept of war of aggression according to the London Charter, namely, by defining it as the deliberate initiation of *armed conflict.*

The IMT refused to define the motive that led to war of aggression, which could be provided heretofore, for good reason, neither by theory nor by practice.

This limitation on the facts at the same time restricts the number of participants to the small circle of persons who were involved in the planning, preparation, and waging of the armed conflict.

Alongside this armed conflict, and predating it, we have the economic war. It is a self-evident struggle waged by the economically weaker party as defense against the attack of the economically strong.

The planned economy of the Four Year Plan served this *war of defense* with the slogan "Securing the Food Supply."

The outward sign of this economic struggle is the world of foreign exchange provisions. Other symptoms are protective duty and export premiums, control of foreign trade, restrictions placed on export and import; the last line of defense is autonomy, the attempt to evade the enemy's measures by exploiting domestic raw material.

These measures are also designed as a way of opposing the stronger forms of economic struggle, and can be used in addition to armed conflict and as substitute for it. They are precautionary measures taken by the state as defense against blockade and economic sanctions which can be less justified but more effective than attack with arms.

It is the natural right of every country to be prepared against such measures.

Now, the prosecution has attempted to make the measures of the economic conflict, particularly those of the Four Year Plan, part of the preparation for the armed aggression, and to hold the economists responsible for crimes against peace.

The prosecution refers to the fact that the defendant Pleiger and his alleged coconspirators occupied high positions in the financial, industrial, and economic life of Germany.

Those are the words in paragraph 2 (*f*), Article II, of Control Council Law No. 10, which thus introduces the concept of a collective guilt on the part of the industrialists.

The IMT did not apply this law, and thus repudiated the disregard implicit in this anticipation of its verdict.

The Nuernberg Military Tribunals, likewise, which later had to concern themselves with this same provision, ignored this bastard of international law [Bastard des Voelkerrechtes].

The IMT clearly adopted a position against the unlimited extension of the circle of participants in the preparation for aggressive war, and demanded proof of the knowledge of *concrete plan* for the waging of armed war.

The prosecution refers to such phrases as "living space" [Lebensraum] or the gaining of "freedom and space" [Freiheit und Raum] which Hitler used in a secret memorandum, or Goering used in a speech.

Aside from the fact that Pleiger had no knowledge of either of these statements, they are expressions of wishes and distant objectives, not of concrete plans.

These were concepts inspired by the fact that Germany was deprived of her colonies which then, in effect, became living space for her enemies. This is the principle of living space, which others, today, with world wide approval, are permitted legally to realize.

The prosecution's chief argument is indirect proof. The argument is that the defendant Pleiger must have been able to deduce, from the economic measures, that a war of aggression was intended.

The prosecution has brought forward the same arguments in other trials. But it is known to the Tribunal that all of the Nuernberg Tribunals acquitted the economists of crimes against peace; that is true of the trials against the directors of the Krupp firm and of I. G. Farben.

I refer particularly to the convincing grounds on which the chief defendant in the I. G. Farben trial, Professor Krauch, was acquitted.

Until 1940 Professor Krauch was chief of a main department in the Office for Raw Materials and Synthetics, and occupied like-

wise the office of a Plenipotentiary General for Chemistry. The judgment stated that he was far below the group of the small circle of initiates who had knowledge of the war of aggression.

Pleiger was in office only for a brief period and was one step lower even than Professor Krauch; he had the same rank as his codefendant Kehrl, who is not charged with crimes against peace.

In addition the IMT pronounced no verdict of guilty because of economic activities on the charge of crimes against peace. Speer and Sauckel were acquitted on this count of the indictment, although they both had close connections with Hitler.

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The next charge leveled against Pleiger is the economic spoliation of the occupied territories.

According to Ordinance No. 7, Article X,* the facts as established by the IMT are to be binding for the Tribunal.

The same is not provided regarding the legal opinion of the IMT. The judge's fundamental rights to form his own legal opinion must not be prejudiced; otherwise he forfeits the name of judge. Such a prohibition would, at the same time, be a prohibition against examining law and allowing it to continue its development, which law was promulgated by a fortuitous committee in a time of political tension. In order to arrive at the concept of criminal spoliation according to the Charter, we must return to the concept of war. Whereas previously we were dealing with the question when the war began, the question now is what is war? If war is only a conflict with weapons, then everything that takes place outside the conflict is not justified by the war.

It is at this point that we have the discrepancy between the concept of land warfare and sea warfare laid wide open.

Sea warfare is primarily economic warfare, and moveable property, by virtue of its easy susceptibility to seizure, does not enjoy the protection of humanity there. As a matter of fact, contraband comprises, everything which is allegedly still inviolable in land warfare—machinery, supplies, and raw materials.

The Hague Convention on Land Warfare does not deal with the seizure of objects which, according to the concept prevailing at its time, could not be seized and shipped off. The concept of humanity does not form the reason for the different procedure

* "The determinations of the International Military Tribunal in the judgment in Case No. 1 that invasions, aggressive acts, aggressive wars, crimes, atrocities, or inhumane acts were planned or occurred, shall be binding on the tribunals established hereunder and shall not be questioned except insofar as the participation therein or knowledge thereof by any particular person may be concerned. Statements of the International Military Tribunal in the judgment in Case No. 1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary."

applying to land and sea warfare, respectively, but represents its feasibility.

The Hague Convention on Land Warfare does not deal with the problem of economic warfare.

It takes up at the point when a fighting army, having occupied a territory, has to be provided with supplies. This same army requires provisioning and billeting for man and horse on the spot of its location. By no means, however, does this same army require any current production of ammunition and arms.

The Hague Convention on Land Warfare proceeds on the basis of the assumption that a completely equipped army is leaving for combat and that the war is over once powder and shot are exhausted.

In 1914 this was still the condition of the armies facing each other when they were almost completely devoid of ammunition and weapons after the decisive initial fighting in the fall of that year.

It was America that contributed toward expanding land warfare into economic warfare.

In modern warfare the requirements of economic war have created conditions which render the utilization of machinery, supplies, and raw materials and the operation of plants as an exigency of war.

The element of war exigency is confronted by the humanitarian trend of thought.

However, qualifications on humanitarian grounds are relative only and do not exist for their own sake and by their own right; they have to adjust themselves to economic warfare as they do to sea warfare. This quality of relativity becomes apparent by the course of development taken by combat techniques.

In using the techniques of air-raid attacks and atomic bombardment no consideration was paid to the humanitarian concept contained in the Hague Convention on Land Warfare, and innumerable civilians were killed and private property valued at billions was destroyed. This was done in entire disregard of Article 22 of the Hague Convention on Land Warfare which states in unambiguous terms:*

> "The combatants do not have the unrestricted right to choose the means of inflicting damage upon the enemy." [Translated from the German version]

The manner in which modern warfare directs itself against the war potential illustrates the close connection existing between combat operation and economic warfare.

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* Annex to Hague Convention No. IV, 18 October 1907; TM 27-251, Treatise Governing Land Warfare (United States Government Printing Office, Washington, 1944), Article 22, page 23.

What is to be considered object and objective of war is proved by the air-raid attacks and is proved by the destruction inflicted by the retreating enemy in his own country upon his own plants. The yielding party knows that whatever it leaves behind will have to be used by the enemy if he desires to continue the struggle.

Whatever the retreating combatant, so to say, yields up as "derelict" is seized by the new army.

A state that undertakes demolition work in its own territory and thus gives precedence to the exigencies of war over humanitarian laws is in no position to demand that the victor show a greater humanitarian response. It cannot expect the victor to consider standing factories as an inviolable haven, and even reconstruct demolished plants and continue to operate them in the interest of the vanquished party.

The Hague Convention on Land Warfare deals with the "Requirements of the Army of Occupation" only in the light of the type of warfare in people's mind at that time pursuant to the experiences made during the German-France War of 1870 and the Russo-Japanese War of 1905.

In view of that we will therefore be looking in vain in the Hague Convention on Land Warfare for provisions concerning something of the greatest importance for modern warfare, that is, provisions concerning factories. What is involved there are performances in kind or the rendering of services for the troops requiring billets as well as nonmotorized transportation.

These narrow bounds are derived from the authoritative Article 52 of the Hague Convention on Land Warfare. It is the local commandant who, according to that passage, has the authority to decree the performance to be rendered for the troops, that is, therefore not the individual soldier. And the highest level mentioned in Article 51 is the "commanding general."

If you peruse Articles 53–55, quoted by the IMT, you will find characteristically enough that there are no restrictions in effect when the most important thing of all is concerned. In connection with the expropriations of governmental or private property which, by some means or other, in the form of *toute espèce de munitions de guerre* can be utilized for warfare, seizure is permissible without restrictions.

It is significant that special mention is made there of means of transportation and communication, including cables. In the way of techniques these represent what was considered, at the time, as a particular requirement of the occupying army in the interest of war. Here you have the initial point of the road leading up to modern developments.

Pursuant to Article 55, the usufructuary right over all revenues

may be expropriated from the state. In this respect it is significant that at this point again there is no mention of factories in this article, though it enumerates forests and agricultural state domains as well as public buildings and real estate.

The Hague Convention on Land Warfare does not contain any basic prohibition banning the seizure of private property.

Article 46 merely contains a directive for military discipline and military decorum with a view to respecting family honor, the life of civilians and small civilian property which is not to be confiscated arbitrarily from the civilian. Everybody who has gone through it will know what is meant by that.

Faced with the economic exigencies of modern warfare it is not possible to resort to Article 43 for determining precedence of "public order" over war exigencies. Particularly under this aspect it becomes clear the precedence goes to the exigency because the duty to maintain order is specifically stated as being one "in accordance with possibilities" and "inasmuch as there exists no compelling obstacle."

If it is permissible to obstruct public life by means of blockade or demolition or by pressure exerted upon neutrals, in that event the occupying power has no commitment to commit military suicide by supplying the needs of the occupied country in an altruistic manner and despite its own needs, and by protecting it from measures imposed upon it by its enemies.

In modern warfare the occupied territory becomes part of the economic sphere of the occupying power.

If it is desirous to receive economic aid it has the duty to render the same.

It is not entitled to lay claim to a more favorable state than that held by the victor who continues to wage combat.

Pleiger is charged in this trial to have participated in the so-called "systematic spoliation."

What the IMT indicated as being systematic spoliation is not the spoliation referred to in the Hague Convention on Land Warfare, which latter spoliation is the crime committed by looting soldiers in violation of their own country's order. Systematic spoliation, on the other hand, represents the act of implementing an official order.

In taking over the management of plants or the shipping of machinery Pleiger was not motivated by any greed seeking his own advantage. His personal gain and his own plant had nothing whatsoever to do with all this. Whatever he did was done by him pursuant to Wehrmacht order or orders of supreme Reich agencies issued in behalf of the Wehrmacht and for the Reich.

The basic idea contained in the Hague Convention on Land Warfare, that is, the idea of humanitarian reasoning only goes into effect in the event that the other basic idea, that is, exigencies of war, including also those of economic warfare, fails to justify measures but is the cause of obviously arbitrary action inflicting unnecessary suffering.

The plea of unexpectability is determined by the suffering of one's own country concomitant to war.

The end of World War II shows the scope of the right held by the occupying power. Even after termination of combat action and void of any war exigencies, the victorious powers are ordering the same economic measures to go into effect, simply as a continuation of economic warfare.

The external manifestation is to be found in "restitution." In this connection the idea of humanitarianism is not at variance with what is being stigmatized as systematic spoliation in this trial.

It is said that the Hague Convention on Land Warfare does not apply to Germany. Scholars, and particularly German scholars too, have tried to lift the secret as to why this should be the case. But the citizen who is systematically being deprived of his property cannot understand the reason for having a principle applied against him which is the subject matter of the trial here. The jurist fails to see why something now having the effect of law should be liable for punishment retroactively. The real reason to explain the Hague Convention on Land Warfare as being nonvalid is the fact that it was never valid in the sphere of economic warfare.

Humanitarianism has discovered a new interpretation and is continuing to lose even more ground in this respect as well as in regard to weapon combat.

Nowadays seizure is not only confined to machinery and plants, but without any ado millions are expelled from their homeland because this appears necessary in the interest of economy in order to make it possible to utilize living space, the latter concept allegedly so tabooed.

The supposed virtue of the other side during the war merely consists in their not having occupied a larger size enemy territory for many years.

But wherever there was just a strip of land to be found which offered an opportunity for economic measures to go into effect, the enemy side too, immediately seized it in exactly the same manner as Germany did out of sheer necessity.

My colleague, Dr. Grube, defense counsel for the codefendant Kehrl has submitted the provision pursuant to which the United

States Army comported itself in Sicily; therein you will find the very thing passed into law which is being prosecuted here on the charge of crime.

I am able to draw your attention to a communication of the French Foreign Office published in August of 1948 in connection with the issue of the dismantling of German economy. This communication admits the systematic spoliation particularly of the Baden watch industry, prior to capitulation, on the matter-of-fact grounds that this watch industry was a prerequisite for France for the production of weapons in the war against Japan, and emphasis is placed upon the statement that all the Allies comported themselves in an identical manner.

I respectfully request this Tribunal to procure this communication for their judicial notice, as it was not yet made available to me in its text.

This practice of governments was not known to the judges of the IMT and it compellingly demands new findings, if necessary even at variance with the findings of the high authority of that International Tribunal.

This reference to governmental practice is not to imply any reference to the illegal actions of other parties or to imply any appeal made to the maxim of *tu quoque,* but merely shows what is valid law.

The charges of which Pleiger is indicted are, first of all, those of spoliation by means of the legal acquisition of plants and works.

In order to evaluate these legal happenings it is necessary to check into Pleiger's legal position and responsibility.

Pleiger did not hold the position of a free industrialist like Flick, Krupp, or Roechling, but much rather he was the employee of a Reich-owned enterprise. If you wish to compare his position with the corresponding position in a private enterprise, it was that of a technical manager.

Special emphasis must be placed upon the fact that the Reich was the sole shareholder, and as a result the general shareholders' meeting, the Aufsichtsrat, and the level directing economic policies were all incorporated in one person.

These three functions of the Reich were exercised by the highest level directing economic policies, that is by Goering or by his direct order.

In the directives issued for the combine, Goering clearly pronounced that he reserved all directives unto himself in his capacity as chief of the enterprise, not only in all fundamental questions, but going into all details.

As a result the legal status of the Vorstand suffered a decisive change from that normally prevailing under corporate law.

Not only did the Reich exercise the right of supervision and control, the Vorstand being charged with the management, but—over and above that—whenever questions of fundamental importance were involved, the Reich availed itself of the right to issue directives vested with the proprietor, and Pleiger was bound to obey.

This is of the greatest significance for the proper evaluation of the expansion of the combine and, incidentally, of the acquisitions which Pleiger is charged with under the charge of spoliation.

It is significant that Pleiger's position did not expand simultaneously with the expansion of the combine. First of all he was subordinated to his colleague Koerner and was only assigned the Montan Block as one of the three big blocks of the combine. Thus, he was restricted to the sphere of constructing his plants.

Among other things Pleiger's reaction to the expansion project is illustrated by the discrepancies existing on the subject of Goering's expansion policies, in connection with which Pleiger tendered his resignation.

It was not Pleiger but the Reich itself, via Goering, in his capacity as highest economic level, who determined the plants the Reich desired to own or to acquire and determined who was to administrate them.

An earlier example is the transfer of the Reich-owned works, Rheinmetall Borsig, to the Hermann Goering Works. These works were transferred to the Hermann Goering Works from out of the likewise Reich-owned administrative corporation VIAG.

In an identical manner the Reich later on transferred its acquisitions to the Hermann Goering Works, in the latter's capacity as the technically responsible works for the administration of the Reich's Montan industrial assets.

The Vorstand of the Hermann Goering Works did not have the authority to purchase a definite item of property at its own discretion, but much rather what happened was that the Reich assigned its interests or shareholding majorities into the Reich-owned works.

This is the case particularly with the blocks of shares of the soft coal holdings acquired by the Reich in 1939 and assigned to the SUBAG at the time of the latter's founding.

This is the case with the 25 percent block of shares of the Erste Bruenner Maschinenfabrik and the Poldihuette.

This is the case with the 45 percent holdings of the Bruenner Waffenwerke.

This is likewise the case with the shares of the Oberschlesische Steinkohlengruben.

It was up to the superimposed Reich agencies to decide on the legality of these happenings. Neither was Pleiger in a position permitting him to check the legality in each individual case nor would he have held any authority to do so.

Pleiger had no reason either to doubt the legality, because these issues were handled by the Reich Ministries by means of their legal staffs and a staff of economic consultants.

If there exists any responsibility, it is to be found vested in those jurists, and you cannot hold the engineer liable for their guilt.

* * * * * * *

The main charge against Pleiger is made with reference to his work as chairman of the Praesidium of the Reich Association Coal.

The proceedings might have created the impression that Pleiger mainly had to concern himself with questions of labor allocation.

In addition to numerous other duties, his energy was particularly directed to the disposition of the entire coal production of 500,000,000 tons per annum and the control and allocation of this coal. Labor questions were of secondary importance, for which there was not even a special committee as there was for main questions. It was only after the formation of the Central Planning Board that the Reich Association Coal dealt with these questions, and then only incidentally.

Speer entered the picture with large production programs and demanded increased coal production as the key raw material of industry.

The automatic reflex was the reference to lack of manpower for increased coal production.

Pleiger did not fix production schedules and did not have any say in the procurement of workers. That was Speer's job in close collaboration with Hitler.

Speer fixed coal production and Speer assigned manpower quotas. Speer ruled.

Pleiger received orders, he had to report, to register, and to execute. He was the ruled.

The pressure on Pleiger was clearly shown by the incident where a new schedule was ordered pertaining to an increase of the iron production by 400,000 tons monthly which emanated from Speer, Hitler, and Goering, who sharply opposed Pleiger.

The production facilities were available, but Pleiger had to point to the lack of manpower.

Hitler had ordered the labor allocation, Speer had promised the manpower, and Sauckel had stated that he had obtained it.

Had this been true, a discussion about manpower questions with Pleiger would have been unnecessary. Yet Pleiger had to defend himself against the charge that mining was a failure. Pleiger was taken to task and appeared as a defendant before Speer, so to speak. Thus begins the fight as to the guilty persons in the planned economy. This is a problem to which I have already referred in my opening statement.

In defense of Pleiger we must point to the mistakes which were not his own; necessary skilled workers are assigned to agriculture or are working for the armed forces or the SS.

Pleiger suggested in his defense that he obtained his own workers to show that he was not making any excuses and that the fault is Sauckel's.

However, Pleiger, in his defense, also opposed the whole principle of the allocation of foreign workers.

He demanded that German miners be exempted from the draft or that they be returned from the front, and he succeeded partially.

He succeeded in rejecting Himmler's obtrusive offer of concentration camp inmates for German mines.

He joined in the strong representations to Hitler to cause the latter to make Germans from the government and Party agencies available for work in place of foreign workers and to have their position filled by women and girls. That is not the part a ruler would play.

Pleiger did not have the position of a ruler. He was chosen by the coal industry, and it was his duty to defend that industry.

He worked well with the industrialists. They were his representatives in the office, but they did not want to take it over when Pleiger offered it to them. Nobody could be found to fight against the governmental machinery, and thus, Pleiger remained the representative and the scapegoat.

Pleiger's aim, however, was not sabotage but collaboration.

That was his duty if the misgivings he had submitted were rejected. He had to subordinate himself to this fundamental of leadership.

In a planned economy at war, the worker cannot refuse to work, nor can an industrialist resign his position or close up his factory. This has been shown in this trial sufficiently enough.

In considering the indictment as a whole, one must realize the following:

The prosecution has turned economics into politics by charging political aims as the motive for action.

There are no definite facts which might show a political attitude by Pleiger. This proof is to be replaced by the assertion that Pleiger was a prominent Nazi and played a leading part.

To judge this, we must put ourselves in Pleiger's position.

Economic independence is the basis of his free attitude toward State and Party. He created this basis through his work. His independence of State and Party he expressed *in the press* in his conception of *free enterprise and world trade.* One looks in vain for slogans like "World Rule and Master Race," or "Fight against Jewry," or similar slogans.

It is not his Party work which is characteristic of Pleiger, but his independent attitude in the general stream and his open speech and the energy with which he presented his own opinions.

In this fight for the processing of *medium and small industry,* to which he belonged, Pleiger lost to the mining industry the *major combines.* It was a fight which, in America, had led to the *Anti-Trust Law.*

In this fight Pleiger did not receive the applause of the Party, for heavy industry headed by the industrialist Borbet had the better connections.

In the course of this fight with the mining industry Pleiger came to Berlin and to *Keppler's office.*

The task that awaited him there was the collaboration in solving the problem of unemployment and economic slump by opening domestic ore deposits. The Salzgitter area presented a political economy problem of the first order. The same political economy viewpoints were to be applied in Germany as they had been in England.

The effort to extract low grade ores *domestically* was incompatible with the political aims of world rule and expansion of *living space* which has high grade and cheap ores.

Pleiger's fight is for *economic,* not political matters. In the face of opposition by all he had to prove that the ore was present and that it could be extracted economically. In the strongest attack by his opponents, however, Goering, as head of the Four Year Plan, refused his support.

Convinced that he was right, Pleiger undertook a second assault. Without aid of Party and governmental agencies, indeed evading these departments and agencies, Pleiger again presented his *economic reasons* to Goering. His arguments were not the equipping of aggressive armies, questions of location, and camouflage possibilities in war, but a *reference to the success of Brassert* in England and the latter's statement that he could do the same in Germany. It was the guaranty of this *expert, whom Pleiger had won over,* which finally tipped the scales. He under-

took the contractual obligation to do the mining "solely on the basis of German ores."

That Pleiger was no Party upstart he proved by his *technical ability* when, at the outbreak of war, he perforce took over, himself, Brassert's work and solved the problems with more success than Brassert himself had thought possible; a flow of iron and steel came from German ores.

Not political prominence created this, but the *faith of the pioneer.* It was a faith which led to victory, against Brassert's hesitations and in the face of Goering's threat of the People's Court.

The economic nature of Pleiger's position is confirmed by his position in the Reich Association Coal. Pleiger was chosen to represent the coal sector just because of the fight against the political preponderance of the Nazi Party, namely, as a protection against the interference by Reich Organization Leader Ley* and his favorite, the coal commissioner, Walther.

The organizational set-up of the coal industry which had been in existence for 50 years remained free from Nazi Party encroachment, and in unanimous collaboration with the industry Pleiger reaped thanks and recognition for his great technical performance during the war.

These are not the achievements of a Party man but those of an economist, and they were accomplished in the face of the ever threatening arm of the State and reproaches coming from the highest offices.

The people of the Reich Association Coal with whom Pleiger worked formed a circle of men of the economy who struggled with the government for the remainder of their economic independence. The circle of the collaborators in the Hermann Goering Works consisted of experts; witnesses have confirmed that Pleiger did not make his choice according to political or ideological points of view but according to efficiency and character.

In spite of the opposition of the Party he placed politically unpopular men and people to whom the racial laws applied into important positions of the plant.

Pleiger's right hand man had resigned from his post in the Ministry when Hitler acceded to power and declared at his first conference with Pleiger that he would never join the Party.

All the mining matters were entrusted to a former member of the Reichstag who, as such, was regarded by the Party as an adversary and was one indeed.

* Robert Ley, Reich Organization Leader of the Nazi Party and chief of the German Labor Front, was indicted in the trial before the International Military Tribunal. He committed suicide in Nuernberg jail before arraignment.

The foundation and management of the Deutsche Bergwerks und Huettenbaugesellschaft was entrusted to a man who had Jewish affiliations by marriage and he had to continue the construction of the plant abandoned by Brassert.

A professor, persecuted because of his Jewish extraction, was given an important position although the Party opposed this.

An associate of long standing was a man who is a land minister today.

This attitude is a touchstone by which one can recognize whether Pleiger was a prominent Party man or a man who in stormy times had to put up with the weather he encountered on his course.

Pleiger received the unavoidable decorations due to his position but he found his highest reward for his courage to speak his mind even to Hitler, to tell him of his worries and doubts, and to speak against him even at the risk that this should have so-called "unpleasant consequences."

It was not because of his political position that Pleiger could use this frank language. Although he had been an early Party member, he never got beyond his rank in 1934. He was listened to because he commanded respect as an economic expert by virtue of the achievements which he had attained in Salzgitter, surmounting all obstacles. This indefatigable worker deserved to be respected; finally, eventually he became indispensable to Goering.

In his frank behavior Pleiger fulfilled the highest duty connected with his position, namely, the open statement of his own contrary views and the ever-recurring opposition.

This was more effective than secret resistance, but it was more dangerous. Nobody took the chance of standing at his side; others would rather show themselves acquiescent in drafting production programs which went beyond all reason and if the programs failed they would unload the responsibility on Pleiger's broad shoulders.

If the secret resistance claims duress in order to defend itself, it was the same with Pleiger, and often he was compelled to submit to this duress. The only difference is that he did not give in without a fight while others simply agreed and, in order to retain the camouflage, did not dare even to shake their heads or to look askance.

Nothing was asked of Pleiger that could appear to him criminal or inhumane during the fight for the existence of his fatherland; all that was expected of him was economic activity.

Should he have resorted to open mutiny against these economic demands, after his opposition had been in vain?

We are still living in a world of nationalities, in which the worst crime is treason to the nation.

No one in the community of international law protects the individual against his state; there is no intervention which could assure him security and there is no organization which could guarantee him the protection of the world against his own country. The so-called warnings by the enemy not to participate in so-called spoliation and slave labor must therefore remain without any importance to the individual from the legal point of view; and equally, judgments must remain unintelligible which are meant to be a deterrent for the future. So long as there is no protection against total policy in the state, world policy of the international community, too, has no claim on totality, viz, the individual.

So long as there is a policy of nationalities, all members of a nation find themselves in the same boat during wartime from which there is no jumping out.

This compulsion on the individual was very drastically expressed in Goering's address to the aircraft industry of 8 July 1938. He said:*

> "Believe me gentlemen, once Germany has again lost a new war, it will be no use for you to go and say—Yes, I did not want this war, I was always opposed to it. Moreover, I was opposed to the system and never wanted to collaborate with it. You will be dismissed with scornful laughter. You are Germans; the others don't care two hoots whether you wanted to collaborate or not."

The politician may not care, but the judge has to care if he has to judge the guilt of the individual, the proving of which is the individual's human right.

It is a fateful error to look at the world only from the point of view of total politics. Apart from the politics which pretends to be the measure of all actions there are other independent worlds. These worlds must not fall victim to the politicians into whose clutches we have fallen.

The politicians must answer for their errors and cannot push them off onto others. The technician can only be made responsible for the errors within the sphere of his profession.

Pleiger could be called to task if his foundry had not worked properly, or if a poor coal supply had caused catastrophies.

Such an accusation cannot be made.

Pleiger's life was uninterrupted work, an indefatigable performance of his duties. If these virtues should become the basis

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* This quotation is from Document R-140, Prosecution Exhibit 970, reproduced in part in section VI B, Volume XII.

of his conviction, then we must erect memorials to the lazy and unconscientious.

This perversion of ethics through the abuse of politics must be stopped. Return Pleiger to his work!

I petition that the defendant Pleiger be acquitted.

G. Extracts from Closing Statement for the Defendant Lammers[1]

DR. SEIDL (counsel for the defendant Lammers) : Mr. President, may it please the Tribunal!

When on 20 November 1945 the IMT trial of Hermann Goering and another 21 defendants opened, one of the tasks of the defense consisted, among other things, of tracing the causes which in the period 1930–1932 rendered possible the tremendous rise of the National Socialist movement and on 30 January 1933 led to the appointment by the President von Hindenburg of the leader of that movement, Adolf Hitler, to the office of Reich Chancellor. The defense has submitted evidence which clearly shows the causal connection between the Versailles Treaty, the later reparations policy of the victors of World War I, and the economic collapse of Germany with its almost 7 million unemployed, the decisive cause of the seizure of power by the National Socialist movement. When the defense undertook this task before the IMT, it did not yet know the text of the plan that originates from, and was named after, the former United States Secretary of the Treasury, Henry Morgenthau, and which was to play such a disastrous role at the conferences of Quebec in September 1944 and of Yalta and Potsdam in 1945. Nor did the defense know at the time of the directive of the Joint Chiefs of Staff to the United States Commander in Chief of the Occupation Forces of April 1945, in which, after an enumeration of the fundamental objectives of Military Government in Germany, the following sentence can be found:[2]

> "Except as may be necessary to carry out these objectives, you will take no steps (a) looking toward the economic rehabilitation of Germany, or (b) designed to maintain or strengthen the Germany economy."

Three and a half years have now passed since the unconditional surrender of Germany. Germany has been mutilated and deprived of her most important agricultural territories. The re-

[1] Complete closing statement is recorded in mimeographed transcript, 16 and 17 November 1949, pages 27795–27847. Opening statement for defendant Lammers is reproduced in section V K, Volume XII.

[2] J.C.S. 1067/6, 26 April 1945. Published in The State Department Bulletin, 21 October 1945, pages 596–607.

mainder has been divided into four zones, industry has been upset by the dismantling program even in its peacetime foundations and reconstruction possibilities, and the country as a whole has been brought to the very edge of the abyss. Henry Morgenthau's policy, raised to resolutions at the conferences of Yalta and Potsdam, has been carried out consistently. This relieves us of the necessity of continuing to demonstrate the causal connection between Versailles and the seizure of power by national socialism, commenced during the IMT trial. For any comparison with the results of the preceding 3½ years of occupation policy in Germany makes the authors of the Versailles Treaty, and the reparations politicians of the period following World War I, even appear as statemen of great political judgment.

The proceedings before the International Military Tribunal and United States Military Tribunals form part of this general occupation policy. In the directive JCS 1067, already mentioned, to the Commander in Chief of the Occupation Forces, a special section is devoted to these trials. Within the framework of the general objectives of the occupation policy, they are to serve a definite aim. The question as to whether the path pursued by the prosecution in these trials is in accordance with the ideas and intentions which were first linked with them in 1945 may be left open. In fact, these trials have been used by the prosecution to strive for a definite aim.

While the agreements of Yalta and Potsdam were destined to smash Germany politically, economically, and militarily for an indefinite time to come, these trials were to serve the purpose of breaking the backbone of the German nation in the moral sense. That, in any event, is obvious from the propaganda which was made with these trials. But also the composition of the defendants during the various trials clearly shows the final goals which were aimed at. The trial before the International Military Tribunal was destined primarily to establish Germany's sole responsibility for the war by means of a judicial verdict. The judgment of the IMT in this respect does not stand up to an objective critical examination and already today we may say that this goal was not achieved. Furthermore, with the condemnation of seven organizations, millions of Germans, who had done nothing else but fulfill their duty toward the fatherland in times of war, were to be branded as criminals in the trial before the IMT. The subsequent trials were to serve the purpose of building the foundations for the discrimination against the various types of professions. Without going into the details of all of these trials, the following may be pointed out: Since the judgment of the IMT was unable to find the High Command of the Wehrmacht and of

the General Staff guilty as a criminal organization, this goal was to be reached by means of two new trials against generals of the Wehrmacht. That in fact was the aim of the indictments in Cases 7 and 12, whereby the opportunity of indicting the highest judicial authorities of the Wehrmacht and the chief of the Naval Operational Staff too was not missed. The trials against the Flick concern, the I. G. Farben industry, and Krupp served the purpose of discriminating against the Germany economy.

May it please the Tribunal, this case awaiting your decision also has to fulfill a task within the sphere of this general purpose. Most of the defendants in this trial were officials during the regime of the Third Reich. Having made the justice administration the special subject of investigation in Case 3, the prosecution now proceeds in a discriminating trial to deprive the civil service in general of the ethical foundations of its existence. Let there be no misunderstanding—nobody objects to the administering of just punishment to those who were in fact guilty of war crimes and crimes against humanity, even though we might at the same time wish that the guilty on both sides be called to account. What we however object to is the attempt of the prosecution to generalize the actions of individuals and to make use of them for obvious reasons to discriminate against entire parts of the population.

We also deny that the manner in which the prosecution presents its documents is suitable for the establishment of the basis for finding the truth and reaching a truly just verdict. It has been stated frequently and must be repeated again—the prosecution does not submit its documents in order to establish the actual facts and the historical truth, but makes its selection of the documents purely from the point of view of their suitability to point an accusing finger against the defendants.

Such a procedure would be unthinkable in a German trial. According to German law, the prosecutor is not only in duty bound to submit incriminating material, but he has also to find the facts which might lead to exoneration and to furnish such evidence material, the loss of which might be feared. The prosecution objected to the use of this principle already in the trial before the International Military Tribunal and without exception has refused during the following trials to act in accordance with this principle. It is clear that the finding of the truth and thus the finding of a just judgment is bound to be rendered impossible if the missing documents, the documents needed for exoneration, are not made available to the defense.

As a result of the hearing of the evidence we are bound to state: In the case of the defendant Lammers the defense has not

left one stone unturned to find the missing documents in order to submit the document material in its entirety to the Tribunal. The defense was in this respect motivated by the fact that nothing would be more suitable to render the finding of the truth and a just verdict impossible than the submission of incomplete document material wherein the historical events are not shown in successive order and the establishment of the original connections of the events is made impossible. The attempts made by the defense in this respect were unsuccessful. The defense had neither the possibility to study the documents of the Reich Chancellery and of the various Reich Ministries in the Document Center in Berlin, nor did the defense get the opportunity as yet to study in particular the most important documents which have not been made use of by the prosecution and which are located here in Nuernberg.

JUDGE MAGUIRE, presiding: Now, Dr. Seidl, the Tribunal has no desire to interfere with the argument of counsel, but at the request of the defendants the Tribunal made orders that all documents here in Nuernberg should be opened to the inspection of the defendants. So far neither you nor any other counsel, with the exception of Dr. Froeschmann, has suggested that the prosecution didn't carry out that order. If you were not satisfied before the evidence was completed that the prosecution had permitted that, or that you had not had access to them, you should have taken it up with the Tribunal then.

We do not look with favor upon the statement at this time, particularly when it is not based upon the facts. No document to which our attention has been called has not been made available to the defense, and any failure on the part of the prosecution to have complied with the Court's order would have brought them up here for contempt, and to make the suggestion now that they didn't do that is hardly proper.

Now, the Tribunal has gone to all lengths in this case, far beyond those which ought to be permitted in any ordinary tribunal, to permit the defense and to enable the defense to get all information and all evidence that they felt might be relevant for their case, and I want to simply note for the record that this statement you have made is not based upon the facts and is not justified by what has happened.

You may proceed.

DR. SEIDL: Mr. President, we fully recognize that Your Honors have done everything possible in your power in order to assist the defense in introducing their evidence in their cases in chief. However, I on my part tried to turn into real practice the ruling that your Tribunal issued and at least I tried to get hold of those

documents which formerly were held by the prosecution here in Nuernberg, documents which the prosecution stated that they wouldn't need any longer for themselves.

I, myself, personally applied to the responsible man in the Document Center, Your Honors, in order to induce him to make these documents available to us for our perusal. However, we were told that, in view of the filing system as it stands in this building, this couldn't be done unless we specified specific documents indicating their file reference; that is to say, we were obliged to say we needed document, for example, NG–3260 or document, let us say, PS–1720. Of course, it wasn't possible for us to do that, Your Honors, and what we actually wanted to achieve and what Your Honors must have had in mind—and in doing so you tried to aid us—as a result of some difficulties it wasn't possible for us to turn the motion into practice.

JUDGE MAGUIRE, presiding: Any difficulty as you now describe it was your duty to have brought to the Tribunal, and you would have had immediate relief and what I have said before on behalf of the Tribunal still stands. This thing of waiting for months before saying you did not have the opportunity is not justified by the facts because you could have come to the Tribunal at any time and we would have taken any action necessary to get you any documents that were available for your defense. Further than that, as the records probably should show, all documents with their proper description either by number or by classification which were in the Document Center at Berlin were at your disposal.

You may proceed.*

DR. SEIDL: As far as it was possible the defense had tried to furnish exonerating evidence by means of hearing of witnesses. But evidence given by witnesses is characterized by the fact that the statements of the respective witnesses, in view of the time elapsed between the events and the hearing of their evidence, cannot be adequate enough to replace the exonerating documentary proof, which could be furnished if the allegedly incriminating but mostly incomplete documents could be countered by the exonerating and supplementary documents. One cannot, in justice, expect these witnesses without having had insight into

* In its rebuttal to the defense closing statement, the prosecution began its statement by replying to the charges of Dr. Seidl and to similar allegations by several of the other defense counsel. (See sec. XIII.) Dr. Seidl, after judgment, filed with the Military Governor for the United States Zone of Germany a "Petition for Re-opening the Proceedings concerning Dr. Hans Heinrich Lammers" which made similar attacks upon the conduct of the trial. This petition was referred to in a motion to the Tribunal on behalf of the defendant Lammers, filed on 10 May 1949, which motion alleged errors of law and fact in the Tribunal's judgment. The Tribunal denied this motion on 12 December 1949, and discussed Dr. Seidl's renewed charges at some length in a memorandum incorporated in its ruling. This order and memorandum are reproduced in section XVIII D 7.

the complete document material to recall after five and more years all incidents in detail, which are the subject of the prosecution documents, and, in part, are of a very complicated nature.

Nor can the defense omit to mention the fact that, contrary to a previous decision of this Tribunal, the hearing of these witnesses of the defense on behalf of Lammers and other defendants —in contrast to those of the prosecution—did not take place before the Court sitting in judgment but before a Commissioner, who did not know the circumstances of the trial and the subject matter of the charges. In a motion for a plenary decision with regard to all Military Tribunals, I have considered it necessary to point out the objections which must be raised against such procedure and I refer in detail to the reasons indicated in my motion.

With this procedure a principle has been violated such as can be derived from the rules of criminal procedure of all civilized nations; namely, that the taking of the evidence has to take place orally and directly before the ruling tribunal, and that the hearing of the witnesses in particular, being one of the most important means of evidence, has to be performed not before some judge delegated for this purpose, but before the ruling tribunal itself. The defense would be neglecting its duty if it failed to assert once more, even after the completion of the taking of the evidence, that the principle of oral and direct hearing during the proceedings has been violated and to reserve all rights which ensue from the violation of this principle.

It should not be left unmentioned that the defense for the defendant, Dr. Lammers, has also been considerably hampered because several important witnesses from the circle of those sentenced in the IMT trial, and at present in the Spandau Prison, could be neither heard nor caused to depose affidavits, since this was impossible without the consent of the Control Council and such consent could not be attained owing to the Control Council having ceased to function.

May it please the Tribunal. In the eyes of the prosecution, the accused former Chief of the Reich Chancellery, Dr. Hans Heinrich Lammers, is a great deal more than what he was in reality—the head of the Secretariat of the Reich government.

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[The omission here is devoted to detailed argumentation concerning the position of the defendant Lammers as Chief of the Reich Chancellery. (*Tr. p. 27803–27823.*)]

After commenting on the actual and legal position of the Chief of the Reich Chancellery in general, we now proceed to dealing

with the individual counts of the indictment. In consideration of the time limit it is, of course, impossible to deal with and treat exhaustively the questions at issue within the compass of this final plea, and we will have to be content with a few basic comments, referring to our brief as regards the details of the evidence as well as the appraisal of its results from a legal aspect.

Counts one and two charge the defendant, Dr. Lammers, with participation in the planning, preparation, and waging of aggressive wars and of wars which violated international treaties. The prosecution has been unable to prove these charges conclusively. For this reason, after the prosecution has closed its arguments and in consideration of the insufficient documentary evidence submitted by the prosecution, we put forward a motion that the trial be discontinued as far as counts one and two are concerned and that these counts be canceled from the indictment. In supplement of this request I submitted an additional brief on 21 October 1947 which deals with a juridical appraisal of the crime against peace as an integral part of international law, to the contents of which I wish to call the attention of the Tribunal.

Within the compass of these concluding comments it should be sufficient to point to the following:

During the trial before the IMT the defense felt obliged to raise formal objections against the legal basis of the proceedings insofar as acts other than true war crimes were made the subjects of the charges. First of all, these objections referred to counts one and two of the indictment, namely to the planning and conducting of aggressive wars, which would constitute a crime against peace. Right at the beginning of the proceedings before the IMT the defense summarized its objections in a declaration which holds good to this day, and which reads in part as follows:*

> " * * * it is demanded that not only should the guilty state be condemned and its liability be established, but that furthermore those men who are responsible for unleashing the unjust war be tried and sentenced by an international tribunal * * * .
>
> "However, today it is not as yet valid international law. Neither in the statute of the League of Nations, world organization against war, nor in the Kellogg-Briand Pact, nor in any other of the treaties which were concluded after 1918 in that first upsurge of attempts to ban aggressive warfare, has this idea been realized. But above all the practice of the League of Nations has, up to the very recent past, been quite unambiguous in that regard. On several occasions the League had to

* The quoted materials are taken from a motion adopted by all defense counsel in the case before the International Military Tribunal. The complete motion is reproduced in Trial of the Major War Criminals, op. cit. supra, volume I, pages 168–170.

decide upon the lawfulness or unlawfulness of action by force of one member against another member, but it always condemned such action by force merely as a violation of international law by the state, and never thought of bringing up for trial the statesmen, generals, and industrialists of the state which recurred to force. And when the new organization for world peace was set up last summer in San Francisco, no new legal maxim was created under which an international tribunal would inflict punishment upon those who unleashed an unjust war. The present trial can therefore, as far as crimes against peace shall be avenged, not invoke existing international law, it is rather a proceeding pursuant to a new penal law, a penal law enacted only after the crime. This is repugnant to a principle of jurisprudence sacred to the civilized world, the partial violation of which by Hitler's Germany has been vehemently discountenanced outside and inside the Reich. This principle is to the effect that only he can be punished who offended against a law in existence at the time of the commission of the act and imposing a penalty. This maxim is one of the great fundamental principles of the political systems of the signatories of the Charter for this Tribunal themselves, to wit: of England since the Middle Ages, of the United States since its creation, of France since its great revolution, and the Soviet Union. And recently when the Control Council for Germany enacted a law to assure the return to a just administration of penal law in Germany, it decreed in the first place the restoration of the maxim, 'No punishment without a penal law in force at the time of the commission of the act.' This maxim is precisely not a rule of expediency but it derives from the recognition of the fact that any defendant must needs consider himself unjustly treated if he is punished under an *ex post facto* law."

The reasons stated in the judgment of the IMT were not apt to refute these objections on the part of the defense. Actually, at the outbreak of the Second World War there was no passage in international law which declared the breach of international peace as criminal and imposed definite punishment. The fact that an act is criminal does not in itself justify the infliction of punishment. The act must at the same time fulfill the postulates of a definite penal law if the punishment is to appear as the consequence of the unlawful act. At least since the "age of enlightenment" the penal law of all civilized nations recognizes the fact that only that law may be called a true penal law which by its nature, concept, and wording fulfills two prerequisites, to wit: it must contain a prohibition and proposed punishment.

Neither the Kellogg-Briand Pact nor any other international agreement made prior to the outbreak of World War II fulfill these conditions. We therefore must continue to deny that when World War II broke out war was not only illegal, but moreover an act liable to a definite punishment, in other words a crime.

Nothing illustrates the vagueness of the legal position in this question more clearly than a declaration made by the President of the IMT, Lord Justice Lawrence (now Lord Oaksey) a few weeks after judgment had been handed down; among other things, this declaration states:*

> "So far as the charge of planning aggressive war is concerned, there was no defendant who was condemned to death or even to imprisonment for this crime alone, and if the Tribunal was wrong in its interpretation of the Kellogg-Briand Pact and aggressive war is not an international crime for which those responsible are punishable, it is open to the civilized states of the world, or some of them, to declare that they deny the validity of any such proposition."

Ever since the IMT judgment was handed down the attacks against its motives have not ceased, but mounted in intensity—at any rate insofar as through it, defendants were sentenced for violation of the international peace.

[Adjournment for the day]

Nor is there any convincing proof to support the assumption that even now war constitutes a crime for which the responsible statesmen and commanders may be called to account individually and under criminal law. The Charter of the United Nations knows no legal maxim declaring aggressive war to be a crime liable to a definite punishment. Nor did the development following the proclamation of the United Nations Charter result in an amplification of the international law in this direction. On the contrary, in the light of this development the proceedings before the IMT appear with ever increasing clarity to be an exceptional procedure having its justification, not in generally recognized principles of international law, but in the unbounded power of the conquerors created by Germany's unconditional surrender. A convincing proof of the correctness of this argumentation is furnished by the treatment of the motion put to the United Nations by the United States which demands that the principles adopted in Nuernberg should be codified and declared to be a part of the general international law. The United Nations assigned this task to two commissions, one of which declared itself to be incompe-

* International Affairs (Apr., London), volume XXIII, No. 2.

tent, while the other, up to now at any rate, has not achieved any practical result.

There is an interpolation there, Your Honors.

The lack of clarity of law on the subject of aggressive warfare as an independent crime *per se* in the sense of the Charter of the IMT and of Control Council Law No. 10 has also been demonstrated in the proceedings instituted before the IMT in the Far East. That trial of Japanese statesmen and commanders in chief was concluded a few days ago and no less than four of the judges registered their individual dissenting opinions for the record. The French judge, the Dutch judge, the Philippine judge, and the Indian judge were unanimous in their opinion that prior to the outbreak of World War II aggressive warfare was no crime under international law.

In this connection we have to call the attention of the Tribunal to another statement which is also contained in the abovementioned declaration of the defense at the beginning of the proceedings before the IMT and which reads:*

> "Finally the defense consider it their duty to point out at this juncture another peculiarity of this trial which departs from the commonly recognized principle of modern jurisprudence. The judges have been appointed exclusively by states which were the one party in this war. This one party to the proceeding is all in one—creator of the statute of the Tribunal and of the rules of law, prosecutor, and judge. It used to be until now the common legal conception that this should not be so; just as the United States of America, as the champion for the institution of international arbitration and jurisdiction, always demanded that neutrals, or neutrals and representatives of all parties, should be called to the bench."

While the evidence was still being presented before the IMT, it appeared that the Soviet Union, together with the other three signatory powers, was not only creator of the statute of the Tribunal and of the rules of criminal law, prosecutor, and judge; but moreover, that it also had taken part in a common plan, which is expressed in terms of penal law in Article 6 [paragraph] (*a*) of the IMT Charter, and forms the subject of the proceedings under counts one and two of the indictment. Thereby, another principle was violated which forms an integral part of any legal order, namely, that no one may sit in judgment in his own case, that no one may take part in the judicial appraisal of facts to which he himself is a party and which form the subject of the judicial inquiry. The ex-Reich Minister of Foreign Affairs, von

* Trial of the Major War Criminals, op. cit. supra, volume I, pages 169 and 170.

Ribbentrop, was right therefore when he declared in his final statement before the IMT:*

"Before the establishment of the Charter of this Tribunal, even the signatory powers of the London Agreement must have had different views about international law and policy than they have today. When I went to see Marshal Stalin in Moscow in 1939, he did not discuss with me the possibility of a peaceful settlement of the German-Polish conflict within the framework of the Kellogg-Briand Pact; but rather he hinted that if in addition to half of Poland and the Baltic countries he did not receive Lithuania and the harbor of Libau [Liepaja], I might as well return home.

"In 1939 the waging of war was obviously not yet regarded as an international crime against peace; otherwise I could not explain Stalin's telegram at the conclusion of the Polish campaign, which read, I quote:

" 'The friendship of Germany and the Soviet Union, based on the blood which they have shed together, has every prospect of being a firm and lasting one.' "

In the proceedings before the IMT the defense did not hesitate to draw the conclusions resulting from these facts in regard to the jurisdiction of the IMT. The Tribunal could not fall in line with the argumentation because if it had, its self-dissolution would have been inevitable. The legal position is fittingly described in an editorial which appeared in the London "Economist" a few days after judgment had been pronounced and which after a reference to the German-Soviet nonaggression pact—the pact dated 23 August 1939—says:

" * * * During the trial the defense produced witnesses, including Baron von Weizsaecker, permanent State Secretary in the German Foreign Office from 1938 to 1943, who testified about a secret treaty attached to the nonaggression pact and providing for territorial partition of six European states between Germany and the Soviet Union. The prosecution made no attempt to disprove this evidence; nevertheless, the judgment completely ignores it. Such silence unfortunately shows that the Nuernberg Tribunal is only within certain limits an independent judiciary. In ordinary criminal law it would certainly be a remarkable case if a judge, summing up on a charge of murder, were to avoid mentioning evidence on the part played by an accomplice in the murder because the evidence revealed that the judge himself had been that accomplice. That

* Complete final statement of the defendant von Ribbentrop to the International Military Tribunal is reproduced in Trial of Major War Criminals, op. cit. supra, volume XXII, pages 373–375.

nobody thinks such retinence extraordinary in the case of Nuernberg merely demonstrates how far we still really are from anything that can be called a reign of law in international affairs. Both Britain and France are on record as having concurred in the expulsion of the Soviet Union from the League of Nations for its unprovoked attack on Finland in 1939; this verdict still stands and is not modified by anything which has happened since. In 1939 Moscow openly glorified in military cooperation with Germany for the destruction of Poland, that ugly offspring of the Versailles Treaty, and Ribbentrop in his last plea quoted a cable of congratulations from Stalin as proof that the Soviet Union had not then regarded the war against Poland as an aggression. The contrast between 1939 and 1946 is indeed fantastic, and it is too much to expect that either historians in the future or Germans in the present will share in the current United Nations Convention of not seeing it * * *."

The defense in the present trial introduced 226 documents dealing with the German-Soviet relations in the period between 1939 and 1941 which are contained in the document books 6–12 for the defendant Lammers. The legal questions resulting from these documents and the facts underlying them have been dealt with in a brief which I submitted to the Tribunal; in it, I arrive at the conclusion that while the conqueror, by virtue of his might, may take measures against the vanquished even from such actions in which he himself took part, he may not legally set up a tribunal as legislator nor act as judge in such tribunal, if he himself participated in the "crime of the vanquished as an accomplice." Actions violating this principle which has its basis in the law of all civilized countries are legally null and void. Null and void according to this interpretation, therefore, is the London Agreement of 8 August 1945, and the IMT Charter which forms an essential part of the latter, inasmuch as, with the cooperation of the U.S.S.R., it orders, in Article 6 [paragraph] (*a*) the criminal prosecution because of a crime against peace committed by the invasion of Poland in the fall of 1939 and the aggressive war against that country. Null and void, furthermore, is the Control Council Law No. 10 which is based on the London Agreement of 8 August 1945, inasmuch as it ordered in Article II, paragraph 1 (*a*), with the cooperation of the Soviet Union, the criminal prosecution, because of a crime against the peace committed by the above-mentioned actions. And finally the judgment of the IMT of 30 September and 1 October 1946 is null and void inasmuch as this judgment entailed the conviction because of these crimes of a defendant with the cooperation of judges from the U.S.S.R.

However, the Reich Minister and Chief of the Reich Chancellery Dr. Lammers could not be convicted on counts one and two of the indictment, even if this Tribunal should arrive at the conclusion that the IMT Charter and Control Council Law No. 10 are in agreement with the general international law in force at the time when the acts were committed and that the objections raised by the defense are unfounded. Let me in this connection call the attention of the Tribunal to some statements made by the IMT in section V of its judgment.* There it reads that—

> " * * * in the opinion of the Tribunal the conspiracy must be made distinct with regard to its criminal intentions. Between it and the decision and deed, there must not be too long an interval * * *. The Tribunal has to examine whether there existed a concrete plan for the waging of war, and it has to determine who took part in this concrete plan."

The prosecution was unable to prove that the defendant Dr. Lammers was in any way connected with plans involving the preparation and conduct of wars of aggression. He did not take part in particular in the four secret discussions held by Hitler on 5 November 1937, 23 May 1939, 22 August 1939, and 23 November 1939, upon which the IMT based its judgment in counts one and two. Nor did the defendant Dr. Lammers subsequently gain knowledge of these conferences from the records. The evidence has shown, on the contrary, that the defendant Dr. Lammers was present at none of the numerous conferences which the Fuehrer and Reich Chancellor had had with nearly all of the European Chiefs of government and foreign ministers and with many plenipotentiaries of overseas countries. The evidence submitted both in the IMT trial and in these proceedings shows clearly that the chief of the Reich Chancellery was at no time concerned with questions of foreign and military matters. He did not belong to the rather small group of persons who at best could still exert a certain amount of influence on the decisions affecting foreign policy and military matters—so far as it was possible at all to exert any authoritative influence on so dynamic a person as Adolf Hitler.

The prosecution was unable to submit one single document showing any participation by the Chief of the Reich Chancellery in the preparation of the campaign against Poland.

Some few documents have been submitted to prove that the defendant Dr. Lammers took part in the preparation of the attack

* Trial of the Major War Criminals, op. cit. supra, volume I, page 225, the judgment of the IMT reads: "But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action. * * * The Tribunal must examine whether a concrete plan to wage war existed and determine the participants in that concrete plan."

on Norway. But in fact these documents do not allow the conclusion to be drawn that the measures and actions of the Chief of the Reich Chancellery mentioned therein are in any causal connection with the occupation of Norway effected on 9 April 1940. The defense must deny altogether that the occupation of Norway was a war of aggression in the sense of the IMT Charter and of Control Council Law No. 10. It was no less a man than the former British Prime Minister Winston Churchill who, after the conclusion of the IMT trial, shed light upon the interrelations which then on 9 April 1940 led to the occupation of Norway by German troops. If there should be any doubts that this action was a genuine preventive measure on the part of Germany, these ought to be eliminated by the following statements of the then First Lord of the British Admiralty:

> "On April 3 the British Cabinet implemented the resolve of the Supreme War Council, and the Admiralty was authorized to mine the Norwegian "Leads" on April 8. As our mining of Norwegian waters might provoke a German retort, it was also agreed that a British brigade and a French contingent should be sent to Narvik to clear the port and advance to the Swedish frontier. Other forces should be despatched to Stavanger, Bergen, and Trondheim, and in order to deny these bases to the enemy * * * I had to ask for the mining to be done on 29 September 1939 * * *."

This example gives cause for some reflection. It shows that the greatest restraint should be observed in forming a judicial judgment on international relations. It may be expected that in the course of the years many documents will still be published and facts become known which might make many a thing appear in a different light and justify an opinion deviating from the concept of the IMT or of other tribunals. It may be that this also applies to the causes which in 1941 led to the war between Germany and the Soviet Union.

The prosecution has submitted a few documents which are to demonstrate the defendant Dr. Lammers' participation in the alignment of administration in the occupied eastern territories. These documents do not permit the conclusion to be drawn that their contents violated any penal law. Above all, however, they fail to show that the Chief of the Reich Chancellery took a hand in the planning and preparation of a war of aggression against the Soviet Union. He did not play a decisive role—on the contrary, he had no share whatever—in the negotiations conducted for 2 years between the Reich government and the Government of the U.S.S.R., and which on the part of the German Government

from time to time gave rise to serious misgivings with regards to the future conduct of the neighbor in the East. In particular, however, the Reich Minister and Chief of the Reich Chancellery at no time took part in the military discussions and measures which directly preceded the invasion of Russia on 22 June 1941.

In count three the defendant Dr. Lammers is charged with having committed war crimes in that he took part in measures destined to incite the civilian population to lynch enemy fliers who had bailed out over German territory.

The prosecution was unable to prove this allegation, which is contained in the indictment. The documents submitted (*635–PS, Pros. Ex. 1229; 057–PS, Pros. Ex. 1230*)* do not permit the conclusion to be drawn that the conduct of the defendant Dr. Lammers became the cause of an action which involved a violation of the Geneva Convention of 1929 or of other provisions under international law. The Reich Minister and Chief of the Reich Chancellery, by a letter which was marked "Secret," merely forwarded a circular letter from Reich Leader Bormann to the Reich Minister of Justice, from which he could only deduce that it concerned the question of quashing cases of lynching which had already occurred. But as the hearing of the evidence has shown, the circular of Bormann submitted by the prosecution as Document 057–PS, Prosecution Exhibit 1230 is not identical with the circular which in fact was added as an enclosure to the defendant Dr. Lammers' letter to the Reich Minister of Justice and which bears the date of 4 June 1944. By some chance the defense gained possession of the circular which at the time was actually forwarded by the Chief of the Reich Chancellery to the Reich Minister of Justice. The contents of this circular—which, to be sure, deal with the same matter—give no reason for any misgivings and no longer any cause for the assumption that the transmission of this circular involved the commission of a war crime. The defense has introduced this circular as Document 636–PS, Lammers Exhibit 55. In the rebuttal proceedings the prosecution submitted excerpts from several judgments passed by American Military Tribunals against citizens who had actually lynched enemy fliers who had bailed out. These verdicts are of no value as evidence material against Dr. Lammers, since the prosecution was unable to prove that there was actually a causal connection between Dr. Lammers' attitude and these cases. Nor can the Tribunal ignore —when examining this case—the reasons which finally drove the German population to this self-protection, namely, that the attacks

* Document 057–PS was introduced in the IMT trial as Prosecution Exhibit USA–329. The German text is reproduced in Trial of the Major War Criminals, op. cit. supra, volume XXV, pages 112 and 113.

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of the Allied air force against the civilian population had in the course of the war reached proportions and forms to exclude any invocation of the holy principles of humanity in this Court.

If there is talk of lynch justice, then one must forget the many hundreds of thousands of old men, women, and children who found a horrible death under the ruins of the German cities, or who appearing as burning torches, threw themselves into rivers in an attempt to save themselves from the enemy's shower of phosphorus. He who is responsible for this kind of warfare and does not even hesitate the use of the atom bomb should—this is our opinion—be careful in the interpretation of laws of war and the principles of humanity.

Under count five of the indictment the defendant Lammers is charged with having committed war crimes and crimes against humanity, inasmuch as he participated in atrocities and other punishable actions against the civilian populations of the occupied countries.

Admittedly, it is correct that the Reich Minister and Chief of the Reich Chancellery cosigned the Fuehrer decree on the basis of which Reich Leader SS Himmler was appointed Reich Commissioner for the Strengthening of Germanism.

As regards the significance of the cosignature the same applies here as has already been stated in general in regard to the question of joint signature under laws and Fuehrer decrees by the Reich Minister and Chief of the Reich Chancellery. The Chief of the Reich Chancellery did not take over the responsibility as his own when cosigning, in this case, nor could he take it. Besides, the contents of this decree constitute neither the fact of a war crime nor that of a crime against humanity. If the Reich Commissioner for the Strengthening of Germanism exceeded the authority entrusted to him by virtue of this decree on his own accord, this happened completely outside the sphere of influence of the defendant Dr. Lammers and he could not have foreseen it. Neither at the time of the issue nor at any later date did the Reich Minister and Chief of the Reich Chancellery have the right or even only the possibility to give orders to the Commissioner or to supervise his measures. As regards the consideration of the question as to whether the resettlement of parts of the population can be considered at all as a war crime or a crime against humanity, the actual praxis of the state after the Second World War must not be ignored. Western Germany of today is flooded with millions of people from the east of the Reich, who have been driven from their houses and homes by force and do not own any other property but what they actually carry on their backs. These measures were carried out in execution of the

agreements of Yalta and Potsdam, that is to say, by virtue of decisions of the powers who also signed the London Agreement of 8 August 1945 and Control Council Law No. 10.

The misery caused through these resettlements is so terrible that as early as 29 March 1946 the Bishops of the Cologne and Paderborn dioceses considered it their duty to draw the attention of the world to this injustice. The following statements appear, among others, in the Pastoral Letter:

> "A few weeks ago we had cause to voice our opinion of the outrageous incidents taking place in the east of Germany, above all in Silesia and the Sudetenland, where more than 10 million Germans have been brutally driven out of their ancestral homes without investigations being made as to their personal guilt. The pen cannot describe the dreadful misery prevailing there in violation of all principles of humanity and justice. All these people are crammed together in the rest of Germany without any possessions, without the possibility to make a living. It cannot be imagined how these masses, driven out of their homes, can avoid becoming restless and peace-disturbing elements."

In the meantime, more millions have been driven out by the use of force and an undeterminable number of refugees—very likely more than one million—have died miserably without awakening the conscience of the world.

I felt obliged as early as during the trial before the IMT to discuss the legal questions arising from this fact and made the following statement in my closing brief for the defendant Frank:*

> "The expatriation and resettlement, carried out in pursuance to the Potsdam Declaration of 2 August 1945 are insofar of importance for the present trial, as the resettlements are carried out on the basis of an agreement between the very signatory powers of the London Agreement of 8 August 1945, are the authors of the Charter for this Tribunal which forms the essential part of that agreement. From these facts two conclusions may be drawn:
>
> "1. The execution of resettlements is either in accordance with the acknowledged principals of the general international law in which case the resettlements cannot be considered as constituting war crimes or crimes against humanity under the statute of this Tribunal. The evidence material submitted

* The IMT sustained an objection to Dr. Seidl's reading of this part of his closing statement on behalf of the defendant Frank in the IMT case on the ground—"* * * the Tribunal considers that your references to the Potsdam Declaration are irrelevant * * *." (See Trial of Major War Criminals, op. cit. supra, vol. XVIII, p. 150.)

by the prosecution in reference to resettlements must then be considered as of no importance and it is then not necessary to go into the details of the charges under this point of the indictment.

"2. Or, the execution of resettlements is a violation of principles, derived from the law of all civilized nations, and then, constitutes a criminal offense. In this case the same conclusions must be drawn with reference to the jurisdiction, as I had to point out already in the case of the defendant Hess with respect to another but similar statement of facts. In this case too, the prosecutors (accusers) would make measures the subject of a judicial trial which they themselves have propagated in the same manner and carried out. And the Tribunal would make those measures the subject of its verdict, which the signatory powers in the agreement of Potsdam of 2 August 1945 considered as necessary, only to classify them 6 days later punishable in the IMT Charter, as war crimes and crimes against humanity.

"The matter at hand is not a case of merely subjecting formal legal facts to examination. Such facts, on the contrary, raise the question of the bases of law and its usage. The law is the epitome of standards which at one and the same time cannot have a different meaning at different places. What one considers today to be legal cannot have been a crime yesterday. The law can only exist as an indivisible entirety or it cannot exist at all."

These statements before the IMT are still valid today and the events which have occurred in the meantime could only confirm the truth of this thesis.

Within the scope of count five of the indictment, the defendant Dr. Lammers is also charged with having participated in the program to exterminate all European Jews still alive. The evidence material submitted by the prosecution does not justify this charge. In the trial before the IMT, as well as during the various subsequent trials, it could be ascertained with a considerable degree of certainty who the persons and agencies were who had been responsible for the execution of these measures in connection with the so-called Final Solution of the Jewish question. In this respect I refer to the statements of the SS Hauptsturmfuehrer Wisliceny and of the former commandant of the concentration camp Auschwitz, Rudolf Hoess, before the IMT.

The testimonies of these witnesses and numerous documents introduced by the prosecution in the various trials show clearly that all of these measures were directed and carried out by Amt

IV of the RSHA, and that these measures had started long before [the time] when the three conferences in January, March, and October 1942 took place, to which the prosecution refers in order to prove the existence of a program for the extermination of European Jewry. The defendant Dr. Lammers did not take part in any of these conferences nor was a program according to the contention of the prosecution established, as is proved by the memoranda on these conferences introduced by the prosecution. The prosecution even failed to prove that the Chief of the Reich Chancellery was subsequently informed about these memoranda. Moreover, the evidence has shown that not only did the Reich Minister and Chief of the Reich Chancellery not agree with the suggestions put forward in these conferences but, on the contrary, opposed them. In this connection I wish to refer to the testimonies of Dr. Lammers on the witness stand and to the statements of the witnesses Dr. Ficker, Dr. Boley, Dr. Loesener, Dr. Ehrensberger, and Dr. Kettner. As a result of the evidence presented it can be regarded as an established fact regarding these counts that the defendant Dr. Lammers did not commit any act which might have been causal to the extermination measures carried out by the officials of the RSHA. Not only so, but the defendant Dr. Lammers, on the contrary, submitted to the Fuehrer five reports on this matter and did everything which could be expected of him in consideration of the information then at his disposal.

Within count five of the indictment the defendant Dr. Lammers is also charged with having taken part in the enactment of laws providing the confinement in concentration camps of such members of the civilian population as were suspected of opposing the policy of the German occupational authorities. In support of this charge the prosecution could furnish no more proof than it could furnish for its other charge that the defendant Dr. Lammers, in his capacity as Chief of the Reich Chancellery, had taken part in the drafting and implementing the so-called Night and Fog Decree. As regards the latter, it has already been established before the IMT and in the course of two other trials, that this decree was issued, upon a direct Hitler order, by the OKW. The Chief of the Reich Chancellery was in no way associated with its preparation and implementation. And as regards the arrest of members of the civilian population endangering the safety of the occupational authorities, reference must be made to the relevant provisions of the Hague Regulations on Land Warfare of 1907 which explicitly give the occupying power the right to take all steps deemed necessary for the safety of the occupation forces and the maintenance of public order. As a matter of

fact after the unconditional surrender, the Allied occupying powers did not hesitate to intern for reasons of safety—as pointed out—approximately one million German nationals, who were suspected for political reasons. In this connection we wish to call the attention of the Tribunal to Directive No. 38 of the Allied Control Council for Germany. This directive deals with the arrest and surveillance of potentially dangerous Germans. According to chapter I, section 1 (c), the idea underlying this directive was to set up rules applicable to the whole of Germany for "the internment of Germans who, without being guilty of definite crimes, are to be regarded as a danger to the Allied cause, as well as regarding the control and surveillance of Germans who constitute a potential danger." That this is a political measure and that the reason for the arrest is the political conviction of the detainee is conclusively proven by chapter I, section 5, of that directive, which says literally:

> "A distinction should be made between imprisonment of war criminals and similar offenders for criminal conduct and internment of potentially dangerous persons who may be confined because their freedom would constitute a danger to the Allied cause * * *."

In appraising the evidential value of this directive and its suitability as a means of interpreting Control Council Law No. 10 it is essential to consider the date of its promulgation. It was promulgated on 12 October 1946, that is, nearly 1½ years after the cessation of hostilities.

Count six of the indictment charges the defendant Dr. Lammers with having committed war crimes and crimes against humanity by participating in the spoliation of public and private property and the exploitation of the territories under German occupation. The evidence introduced by the prosecution fails to show that the ex-Reich Minister and Chief of the Reich Chancellery displayed any initiative of his own in this direction. All he did in this connection was to arrange the communication between the Fuehrer and the individual Reich Ministries without possessing any jurisdiction or responsibility in the matter itself. As regards the laws, ordinances, and Fuehrer decrees cosigned by him too, the above comments will also apply. These directives do not in themselves contain anything which might constitute a war crime or a crime against humanity. For the rest, it must be pointed out in this connection as well that the act of robbery and spoliation, as an offense under international law, is not less vague and disputed than the "exploitation of occupied territories," as put forward by the prosecution. A valuable contribution toward the

interpretation of the relative provisions of the IMT Charter and Control Council Law No. 10 is furnished by the dismantling policy in Germany adopted after German's unconditional surrender and prior to the conclusions of a peace treaty and are being carried out to this day by the occupation powers. It is no exaggeration to say that the measures taken in pursuit of this policy of dismantling, more fittingly described as policy of devastation, dwarf everything which was done by German troops and occupation authorities in the way of confiscations in the occupied territories. In this connection it can at least be said in defense of the measures taken in the territories under German military occupation that Germany at that time was involved in a war endangering the very life of the whole nation, of which fact, at least since the Casablanca declaration of January 1943, there can be no doubt.

Count seven of the indictment charges the ex-Reich Minister and Chief of the Reich Chancellery with having participated in a program which concerned the deportation of members of the civilian population in the occupied territories. Here, too, the defense must deny that the evidence introduced by the prosecution indicates an initiative in this direction on the part of the defendant Dr. Lammers himself. While it is true that the Reich Minister and Chief of the Reich Chancellery in almost all the other cases also cosigned the Fuehrer decree through which Gauleiter Sauckel was appointed Plenipotentiary General for the Allocation of Labor on 21 March 1942, the fact of his having jointly signed this decree does not establish a factual responsibility on the part of the Reich Minister and Chief of the Reich Chancellery in this case any more than it does in any other; his signature only served as certification. For the rest, this decree too contains no provision constituting the fact of a war crime or a crime against humanity. The Plenipotentiary General for the Allocation of Labor was directly responsible to the Fuehrer and the Reich Minister and Chief of the Reich Chancellery had no right, either on the strength of the above mentioned decree or of any other regulations, to issue instructions to him or exercise any official control over him.

The indictment also mentions a conference of the chiefs which took place on 11 July 1944, with the Reich Minister and Chief of the Reich Chancellery in the chair, which dealt with questions of labor allocation. The memorandum on this conference introduced by the prosecution gives no correct account of what happened during this conference. The defense witness Dr. Boley who drafted this memorandum gave a detailed explanation of the reasons which actuated him in drafting this incomplete and unfinished version of the memorandum and, like various other

witnesses, gave an account of what actually happened during that conference. The evidence showed that the conference was held for the purpose of discussing the complaint put forward by various chiefs of the administration in the occupied territories against the agencies of the Penipotentiary General for the Allocation of Labor and that the Reich Minister and Chief of the Reich Chancellery, in his capacity as a mediator between the parties involved, did not take any initiative toward an intensified mobilization of conscripted foreign manpower. No regulations were taken as a result of these discussions, and the authorities directly concerned with the matter—not including the Reich Chancellery—were subsequently left to deal with the matter.

As regards the facts of "deportation for forced labor," what is to be said in regard to various other war crimes and crimes against humanity alleged by the prosecution applies to this count as well. In this question too it must be assumed that the signatory powers of the London Agreement of 8 August 1945 and Control Council Law No. 10 have taken a different view, or else the secret records of the resolutions of the chiefs of government of Great Britain, the United States of America, and the U.S.S.R., at the Yalta Conference of 1 February 1945 would not make sense. Section 2 of this secret record lays down that reparations are to be demanded of Germany, in triple form, as follows:

> "(a) Within a period of 2 years after the capitulation of Germany or after cessation of organized resistance, wholesale dismantling of German-owned property inside and outside Germany * * *.
>
> "(b) Annual deliveries from current production of merchandise during a period to be determined after the end of the war.
>
> "(c) *Employment of German manpower.*" [Emphasis supplied.]

The Tribunal cannot possibly disregard this agreement and the practice actually adopted by the occupying powers in their interpretation of Control Council Law No. 10, unless at the risk of violating a generally recognized principle of international law: Whoever disregards a provision of international law cannot demand that another person respect it.

Besides, it would be completely wrong to assume that the legal fact of a war crime or crime against humanity is unequivocally established. Numerous writers have adduced weighty reasons to prove that there is no such thing as an *independent* fact of crime against humanity. They correctly point out that it is only possible to talk of a crime against humanity if it is proved that the act was a "crime" according to the law in force at the time

of its commission. In judging this, the crime against humanity merely appears as the sum of already existent penal facts with a qualified punishment. But in general, the following is still to be added to this question:

There can never be a crime within the meaning of Article II, paragraph 1(c) of Control Council Law No. 10 in a case where the contrary behavior would itself have been a crime.

The correctness of this sentence follows directly from the maxim of contradiction. The deeper sense of the established thesis is the following: What is a "crime" and what therefore, under special conditions, is a "crime against humanity" must be judged according to *uniform* and *generally valid* principles. It is not possible to regard something as a crime on the one hand which is not a crime on the other hand and *vice versa.* That would violate the international *principle of equality* which must be applied, as to every law, so also to Control Council Law No. 10 and its interpretation. I would like to quote here the words of a famous English legal theorist, Holland, in The Element of Jurisprudence (13th Edition, Oxford, 1924). It says on page 11:

> "Principles of geology elaborated from the observation of England alone hold good all over the globe, insofar as the same substances and forces are everywhere present; and the principles of jurisprudence, if arrived at entirely from English data, would be true if applied to the particular laws of any other community of human beings."

The subject matter of our proceedings are alleged crimes which were committed by *Germans* in the course of a war waged by *Germany.* The fact of such a war may be a regrettable circumstance, but in how far there exists and existed any "guilt" in it and its origin need not be discussed here. The fact of the war is a given fact; but such a war is a state of things which international law takes into consideration and subjects to special principles. The national laws occupy themselves with it too. It is an internationally recognized maxim that the individual national in it has to keep faith with *his own* country. I do not refer here to conscious and deliberate violations of the laws for waging war. But after all, a behavior of the individual in time of war which runs against the interests of *his own* country is regarded as a "crime" everywhere in the world. Therefore, as a matter of principle, whatever he does in order to bring about the victory of his own country cannot on the other hand be charged against him as a crime, even if in peacetime it would be subject to different judgment. Thus, for example, the British law to which the quoted utterance of Holland refers recognizes treason against one's own

country in time of war as the biggest crime, punishable by death. If we apply this to our case it would mean: Every case of support of the "enemy" in time of war would have been a "crime" for a German, and it must therefore be a suitable *defense against the charge of crime if it* is proved that the expected behavior would in itself have been such a support of the enemy. Wherever such a proof is furnished—and the defense has furnished such proof—and wherever there is a case of a measure *necessary* for one's own waging of war, there can be no "crime against humanity" even if in peacetime such behavior would be reprehensible. After all, even the killing of the enemy is licit, nay ordered, in time of war, whereas in peacetime it is one of the biggest crimes.

In answering the question of which principles are to be applied in the interpretation of Control Council Law No. 10, we must start from the fact that, at the time of their acts, the defendants were subject to *German law;* the measure of their responsibility was defined by it, and even today one must justly assess it according to *that period* of time. That applies to the question of the obligation of the officials to the law as well as to the defensive assertion to have acted on orders.

In several trials before the United States Military Tribunals it has already been recognized that a state of emergency is a genuine reason for precluding guilt. These prerequisites surely also apply to the former Reich Minister and Chief of the Reich Chancellery who was bound to the instructions of the Fuehrer and, as has been proved by the evidence, at least during the war had no possibility of resigning from his office.

Beyond that, it is recognized in jurisprudence and in legal literature that the *"general public,"* the *"state"* too, may be in a state of emergency so that interventions which are meant to serve, and do serve, the elimination of this state of emergency may become exempt from punishment. The *national self-defense* as well as the *national state of emergency* are legal institutions recognized in the literature on international law, whereby a national state of emergency may be defined as an *emergency in regard to vital interests of the state and the general population which cannot be eliminated in any other way.* As far as it is conceded to act according to it, there is not only a reason for the preclusion of guilt to be assumed, but in that case it is a *genuine justifying reason.* It is unnecessary to prove in any special manner during these proceedings that at least from 1941 onward Germany was in a state of national emergency which threatened the very foundations of her existence. The last doubts in that respect must have been eliminated by the demands for the uncon-

ditional surrender of Germany, raised at the Casablanca conference in 1943.

Beside the *general state of national emergency,* the literature on international law also recognizes a special *state of war emergency.* According to it certain acts are licit "in self-defense and in a state of emergency" which violate the laws of war and therefore, in themselves, would be contrary to international law. The emergency in which the life and the possibility of development, that is, self-preservation and self-development of the threatened state, are at stake, according to the general principles as recognized in the internal law of all civilized nations too, justifies the violation of every maxim of international law, hence also the legal maxims of the laws of war. Applying therefore the concepts of self-defense and emergency as recognized in international and in penal law, the illegality of the committed violations is precluded if the state was in a situation which threatened its existence and was not to be eliminated by any other means.

May it please the Tribunal.

Within the national structure of the Third Reich, the Reich Minister and Chief of the Reich Chancellery had to fulfill essentially formal tasks. The Reich Chancellery was not by any means an authority with its own factual competency as, for instance, a Reich Ministry. It chief was bound to the instructions of the Fuehrer and Reich Chancellor and had no right to give instructions in his own name to the Reich Ministers and chiefs of other supreme Reich authorities, nor did he have any official supervisory function over them. This has been unequivocally proved beyond any doubt by the evidence in this trial.

But the evidence has also shown something else. It has proved that the defendant Dr. Lammers, in his capacity as Chief of the Reich Chancellery, in spite of his small political influence has tried at all times to preserve the concept of the legal state and to prevent wrong wherever he got to know about it and wherever it was possible for him to do so. He fulfilled the duties of his difficult office at a time when the foundations of the existence of the whole nation were at stake. He could not leave his post as Reich Minister at a time when every simple laborer and soldier was asked to fulfill his duty to the last in order to avert the downfall of the Reich.

H. Extracts from Closing Statement for the Defendant Schwerin von Krosigk[1]

DR. FRITSCH (counsel for the defendant Schwerin von Krosigk): Your Honors.

* * * * * * *

Before dealing with the individual counts of the indictment, may I at this point be allowed to discuss the basic *structure and organization* of the Ministry of Finance, since only on the basis of knowledge of these facts can the question as to the responsibility for the acts charged in the indictment be answered.

For the sake of simplification I have submitted an affidavit of the former Oberregierungsrat Dr. Eckhardt. The witness who, as an expert on the development, position, and sphere of tasks of the Reich Ministry of Finance made his depositions under oath, has given an appropriate description of the development of the Reich Ministry of Finance. This description agrees fully with the testimony given by the defendant on the stand. May I, in order to make plain this development, be allowed to set forth the following: The original Reich Treasury [Reichsschatzamt] of the imperial era became first an agency kept going by contributions of the Laender and developed later as a result of the so-called "Financial Reform" [Erzberger's] into an institution of the Reich which had primacy over the Laender. Nevertheless, the Reich Ministry of Finance has a very limited sphere of activity. It does not have, and will never get, jurisdiction within the National Socialist regime for economic questions in general, particularly for questions of foreign currency or for German currency and the problems connected with it. But it has a relatively strong position, which is expressed particularly in the so-called right of veto, a provision protecting the Reich Minister of Finance from being overruled by the Cabinet in questions of finance, whenever the Reich Chancellor sided with the Reich Minister of Finance, and above all is it provided with the protection by Parliament. Not only the defendant in the witness box, but also the Under Secretary of State Reinhardt, who certainly must be regarded a follower of the National Socialist regime, testified here uniformly that Parliament was the most effective protection of the Reich Minister of Finance in maintaining order and cleanliness in financial matters, and Reinhardt stated literally the following:[2]

[1] Complete closing statement is recorded in mimeographed transcript, 17 November 1948, pages 27847–27901. The opening statement for the defendant Schwerin von Krosigk is reproduced in section V R, Volume XII. The final statement of the defendant Schwerin von Krosigk to the Tribunal is reproduced in section XIV, this volume.

[2] Extracts from the testimony of the defense witness Fritz Reinhardt are reproduced in section VI B, volume XII.

"During my time as State Secretary in the Reich Ministry of Finance I desired a budgetary committee or auditing committee of the Reichstag. I frequently told men close to me that the position of the Reich Minister of Finance would be quite different if we had a Reichstag that was active. For Hitler finances were strictly a technical matter concerning funds. Goering coined the expression, 'Money is of no significance' and Himmler spoke about the pen pushers in the Reich Ministry of Finance."

As to formalities, therefore, the National Socialist regime hardly may have brought something new, as to substance, however, many things were now changed. The various problems referring to budget expenditure will be treated in the discussion of counts one and two. Here I wish to emphasize the following facts established by the evidence. By the abolition of the protection offered by Parliament and the committees which naturally conformed to a large extent with the wishes of the Reich Minister of Finance, particularly in regard to an economical administration of the budget, the always existing endeavors of the various departments to secure means for themselves are facilitated. The only pillar able to protect the Reich Minister of Finance against such attempts, was the Reich Chancellor. Quite apart from the fact that Hitler personally hardly had any understanding of financial questions, as shown by the defendant's testimony, it is inherent in the nature of a dictator to consider these things as of secondary importance, and furthermore to make concession to his followers, who formed the majority of his other departmental chiefs. Yet there was something else. Between the guiding directive of Hitler and its execution in the departments of the various Ministers there were interpolated superior agencies which on their part held authority to issue directives to the various Ministers. In this manner the Reich Minister of Finance was still more removed from the center where the decisive policies were shaped, and he became an instrument executing the will of superior agencies. How these interpolations occurred in the course of time will be described at the proper place in the discussion of the individual counts. Now I am only referring to the various agencies, for example, the Plenipotentiary for the Four Year Plan, the Ministerial Council for Reich Defense, and the several Plenipotentiaries General. These agencies which Hitler himself had created and vested with legislative powers could not only force the departmental Ministers to issue certain administrative directives, but could themselves issue such directives under their own authority, and could deal over the head of the departmental Minister directly with his subordinated agencies. There may have been many different reasons for this distribution of authority,

but one of them certainly was to keep the powers of the individual officials as small as possible. This development was especially marked in the case of the Reich Ministry of Finance. In this connection I wish to refer to the statements of the witness Eckhardt. The result of this development as described by the witness was unavoidable and demoted the Reich Minister of Finance to a mere administration executive, especially since he had been deprived of every means of exercising political influence, for example, by the loss, to all intents and purposes, of his right of vote. Just how far this political importance went is strikingly illustrated by a testimony given by Under Secretary of State Reinhardt. He has testified before Judge Crawford that he as well as the defendant heard about Hitler's intention on 1 September 1939 to read a proclamation on behalf of the government, only on the morning of that day shortly before the session, and that neither he, nor the Minister himself, had any previous knowledge of that intention or of the contents of this proclamation. Constitutionally Hitler's position was such that he united in his hand alone the whole authority of the State—as the IMT found in its judgment—and that in this way the Ministers, particularly those of nonpolitical departments, had become mere chiefs of administration. This state of affairs limits, on the other hand, responsibility of such a Minister. On this subject, Professor Kaufmann and Professor Dr. Peters were heard as witnesses.* It would go beyond the scope of this final plea to discuss their testimony in detail. As to the responsibility of a Minister for actions of his own and for these of the subordinate officials, the defense wishes to state as follows:

I shall touch but briefly on the question of responsibility for laws and ordinances. Surely there can be no doubt that a Minister assumes responsibility only by his signature under a law, not by the mere participation in a Cabinet meeting in which such law is passed. This was the legal position even under the Weimar Constitution. A vote of nonconfidence was entered against those Ministers who had signed the law. There was good reason for this. For if mere participation in a Cabinet meeting would burden with responsibility for a law even these Ministers who were opposed to it and would expose them to the risk of a vote of nonconfidence or of a trial before the Reich Constitutional Court, even the dissenting Ministers would in either case have to tender their resignation. This would exclude government by coalition cabinets, which frequently and necessarily express by vote their

* The testimony of Professor Erich Kaufmann, a defense witness, is recorded in mimeographed transcript, 3 June 1948, pages 7237–7311.

The testimony of Dr. Hans Peters, a prosecution witness, is recorded in mimeographed transcript, 8 and 9 January and 26 February 1948; pages 311–384, 2434–2439.

divergent opinions. Therefore, it was valid German constitutional law that the Minister became responsible only by his signature and not by mere participation in a vote by word or gesture or voting card. Moreover, this signature in itself does not burden the Minister with the responsibility for the whole contents of a law or an ordinance. German constitutional law always made a distinction between the department in charge of a certain matter, that is, Federfuehrung, and others which merely expressed their participation by the signature of their Ministers [federfuehrenden und des lediglich mitzeichnenden Ressorts]. Only the Minister in charge [der federfuehrende Minister] is responsible for the whole contents of a law, the cosigning Minister only for that part of the law which concerns his department, and which is covered by his signature. In the witness box my client referred to the example of the Private Railroads Act, for which the Minister of Transport signed as the responsible Minister, while the other cosignatory Ministers were responsible for those sections only which pertained to their departments. This limitation to a certain part of the subject matter was even more accentuated by a development described vividly by Under Secretary of State Schaffer in his affidavit (*Krosigk–302, Krosigk Ex. 161*), a development which took place under Bruening with the result that the Ministers increasingly restricted their attention to the questions of their respective departments and left the questions of over-all policy to the Reich Chancellor. Naturally, this tendency continued under Hitler, and that to an even greater extent. That his responsibility is restricted to the questions pertaining to his department is of importance for my client particularly in regard to the ordinances implementing the Reich Citizenship Law. This law exclusively authorized the Minister of the Interior to issue implementation ordinances, and he had to bear the responsibility for them exclusively. If he called in other departments, for example, the Minister of Finance for a question of budget law or property law, then the latter's responsibility was limited to these questions.

Just as briefly, I want to touch on the question of responsibility for subordinated officials. Every superior official bears the responsibility for actions which his subordinates committed according to his directives. However, officers and officials in higher positions also have a certain measure of initiative and independence of their own. They cannot be led by strings in every detail. Therefore, impossible consequences would result from holding a superior responsible for actions which are neither known to him nor in line with his intentions. This applies all the more if responsibility is to be established not only under constitutional law, but under criminal law. In this case, a superior's responsi-

bility can only be established if he can rightly be charged with neglect of his supervisory duties. In this connection I should like to quote the interesting opinion of Military Tribunal V in the case of the United States of America against Leeb, et al.* The Tribunal, in dealing with the position of a commander, states that:

> "He has the rights to assume that details entrusted to responsible subordinates will be legally executed. The President of the United States is Commander in Chief of its military forces. Criminal acts committed by those forces cannot in themselves be charged to him on the theory of subordination.***
>
> "There must be a personal dereliction. That can occur only where the act is directly traceable to him or where his failure to properly supervise his subordinates constitutes criminal negligence on his part."

This applies, *mutatis mutandis,* also to a Minister with a Ministry counting more than a hundred independent Referenten, and with an administrative staff of 150,000 persons. Thus, my client cannot be held responsible for a proposal made by an official of the external administration to apply the terms of the 11th Ordinance for the implementation of the Reich Citizenship Law—forfeiture of property to the Reich—even to persons who evaded the loss of their citizenship by suicide, nor for an official of the Ministry if he follows up this proposal without informing the Minister at all.

* * * * * * *

I shall now discuss count five. It is impossible at this point to discuss the prosecution's arguments even approximately in detail. I therefore leave to the closing brief the detailed discussion of the problems of the SS budget, of the forming of a rural district Auschwitz, of the implications of the 11th and 13th Ordinances implementing the Reich Citizenship Law, and some other points.

After the Tribunal had ruled that count four be eliminated, the prosecution introduced the documents originally submitted as support for this charge, as exhibits for count five, with the obvious aim of attempting to establish proof by circumstantial evidence. The prosecution, or at least some of its members, without doubt realize that the defendant Graf Schwerin von Krosigk never showed an anti-Jewish attitude or, even less, supported measures directed against other human beings simply because they belonged to another nation or race. Thus, the prosecution knows that a participation of Count Schwerin von Krosigk in the so-called Final Solution of the Jewish Problem is out of the question. I have already pointed out that in this particular case

*Judgment, Case 12, Volume XI, this series.

evidence was frequently submitted for obviously optical reasons in order to attempt to show the character of the defendant according to the intentions of the prosecution, in as unfavorable a light as possible. To counteract this method, the defense felt compelled to submit material of a general nature in order to readjust the picture of the defendant which the prosecution was trying to show in a one-sided distortion. At the end of my plea I shall discuss this problem briefly which, however, is particularly important in connection with count five and should therefore be mentioned briefly here.

The defendant is on trial for war crimes and crimes against humanity. In order to clarify the legal meaning of these conceptions it has to be stated here that under Article II, paragraph 1(b), of Control Council Law No. 10 only an offense against the enemy can constitute a war crime. In the closing statement in Case 1, Medical case, the prosecution, according to the German transcript, page 10,904 (*Eng. Tr. p. 10723*), stated:*

> "Laws and usages of war apply to belligerents but not to internal matters of a nation or relations between allies. Crimes committed by Germans against other Germans are not war crimes, nor are acts of Germans against Hungarians or Rumanians."

As to the definition of crimes against humanity reference is made to the judgment of the Military Tribunal IV in case V, United States *vs.* Flick et al., so far as it deals with the problem of what rights are alleged to have been violated. The Tribunal in that judgment held that to constitute a crime against humanity, an offense must have been directed against life or limb of a person, but that acts directed against property do not come in this category.

This clarification seemed to be necessary since, in the opinion of the defense, the prosecution not only in their opening statement but also in various statements during the trial did not observe this clear distinction. Thus, all acts to the detriment of, for example, Jews, citizens of the German Reich, or of states allied with Germany, do not constitute war crimes. Offenses against the property of these individuals are acts on which this Tribunal has no jurisdiction to pass judgment. Under this count the prosecution dealt mainly with the alleged role played by the Reich Ministry of Finance in the persecution of Jews by the Third Reich, a role which naturally could have been concerned with property only. However, I shall deal with this problem in detail

* In this same closing statement the prosecution argued that the crimes in question, though not war crimes, were crimes against humanity and thus within the jurisdiction of the Tribunal. (United States *vs.* Karl Brandt, et al., Vol. I, this series, pp. 912–915.)

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in my closing brief. Here, I should like to make only the following comments.

During direct examination, Count Schwerin von Krosigk called the so-called "Broken Glass Week" [Kristallwoche] 1938 one of the most hideous incidents. Testimony of various witnesses has shown the Tribunal that neither he himself nor his Ministry had any advance knowledge of these things and that the defendant himself contacted Goering and Goebbels immediately after he had learned of these incidents with the possible aim of stopping these occurrences. At this point I do not need enter in detail into this matter of his personal attitude toward such abnormities. Although this is absolutely irrelevant from the point of view of criminal responsibility, the prosecution connects the Reich Finance Minister with these events through Document 1816–PS, Prosecution Exhibit 1441,[1] which gives details on the well known meeting with Goering on 12 November 1938 and the resulting measures. Count Schwerin von Krosigk explained to the Court the reasons why, although for obvious reasons he did not care for the company of men of the regime of that time, he remained in office. Furthermore, he testified that one of the moments when he was almost decided to resign was during these days. His own words during the direct examination were—

"These hideous incidents came as a complete surprise to me."

I have shown that at this time men began to influence him who wanted him at his office for the preservation of decency and order within the Reich Ministry of Finance and that he was induced by these considerations not to carry out his decision to resign his office. It seems to me particularly important to recall to the Tribunal's attention that at that time Dr. Zarden,[2] his former Jewish State Secretary, asked him at least to alleviate the difficulties and persecutions which were then certainly to be expected.

Then followed the meeting at Goering's the minutes of which, although incomplete, were submitted to this Court. Goering in his capacity as Plenipotentiary for the Four Year Plan decreed a fine for the Jews amounting to 1 billion reichsmarks and ordered the Reich Ministry of Finance, without previous consultation of course, to take the necessary further action as the administrative agency of the Reich. One should imagine oneself in the situation of Count Schwerin von Krosigk. Because of requests of various individuals he had decided to stay in office with the aim of pre-

[1] Introduced in the IMT trial as Prosecution Exhibit USA–261. The German text is reproduced in Trial of the Major War Criminals, op. cit. supra, volume XXVIII, pages 499–540.

[2] Reference is made to Dr. Arthur Zarden, State Secretary in the Reich Ministry of Finance in the early thirties.

venting excesses and of mitigating hardships. If the defendant had stated his unwillingness to carry out the decree, that would of course have led to the opposite of the intended result, namely, either to his dismissal with consequences, as they become known later on, or to the assignment to another agency of the implementation of the said decree, Himmler would have gladly agreed to this if, say, the Reich Security Main Office or the Economic and Administration Main Office—that is, one of his own offices—had been entrusted with dealing with the matter. Schwerin von Krosigk had to make his decision accordingly, and he made it —with a heavy heart—but his action was logical in view of the conditions of that time. I have proved—I will go into the details of this matter in the closing brief—that he immediately instructed his officials to carry out the Goering decree as mildly as possible. Schwerin von Krosigk does not boast that he achieved all the aims which he had set himself. He did not do it in this case either, but there were quite a number of points which he can book to his credit. It had been the will of Goering, which is quite brutally expressed in the minutes of the meeting of 12 November 1938,[1] that the compensations payable by the insurance companies should be confiscated in favor of the Reich without being credited to the capital levy payable by the Jews. Schwerin von Krosigk gave orders that the sums payable by the insurance companies be credited to the fine of the individual concerned. Furthermore, he ordered that all requests for consideration in specially hard cases should be submitted to the Ministry itself, so that a uniform and considerate treatment might be ensured. The fact that Count Schwerin von Krosigk helped the people affected as far as possible is proved by the conversation which the former Jewish Under Secretary, Dr. Zarden, who has already been repeatedly mentioned, had with the Assistant Ministerial Director Bayrhoffer, in the course of which—I quote:[2]

> "He expressed his thanks for the fair and decent way in which the ordinance had been carried out."

In this connection I should like to say a few more words about the matter of the "account Max Heiliger." These matters are directly connected with the routine procedure adopted by the cashier's offices. On earlier occasions I have commented on the evidence concerning the position of the Reich Main Pay Office. I just want to stress once more that the Reichshauptkasse was not the pay office of the Reich Minister of Finance, but the pay

[1] Document 1816-PS, Prosecution Exhibit 1441, reproduced in section IX B, Volume XIII.

[2] Quotation from the affidavit of Walter Bayrhoffer (Krosigk 30, Krosigk Ex. 103). Bayrhoffer testified as a defense witness. His complete testimony is recorded in mimeographed transcript, 2 June 1948, pages 7181-7200.

office for a great number of top level Reich authorities. The witness Genske* has described in detail the procedure connected with payments to the Reichshauptkasse. In the case under discussion the documents submitted by the prosecution give a clear picture of the development of the matter. In brief words, this is what happens. Some agency or other pays in money to the Reichshauptkasse to be credited to the account of "Max Heiliger" but without issuing a paying in slip. I now put it to you—if the agency which had forwarded the money had issued a paying-in slip ordering the money to be posted to one of the accounts provided in the budget, or had at least named the office which could issue this paying-in slip, these moneys would have been accepted without any further difficulty and would have been booked as paid in. The office for which the money was intended would have been informed of its receipt by the Reichshauptkasse and would have been requested to issue the final paying-in slip, and the Reich Ministry of Finance would know nothing at all of the whole matter. Now in this case, as has been shown by the record, it was not clear which was the office concerned. No paying-in slip had been issued and so one proceeded to search for the office competent to issue the paying-in slip. The officials of the Reichshauptkasse got no results and asked the Reich Ministry of Finance to issue a temporary paying-in slip—mark all this red tape—and requested furthermore that the Reich Ministry of Finance should undertake the search for the office concerned on behalf of the Reichshauptkasse. That is the course of events. It is quite obvious that Count Schwerin von Krosigk would not be informed of these pure routine matters. His testimony to that effect would not even have been necessary. Thus, however, this matter no longer has any incriminating value either for the present proceedings.

Under this count, I should briefly like to allude to one other matter, the Main Trustee Office East. The prosecution tries to suggest in regard to this Reich agency that it had confiscated private Polish money in favor of the Reich, and that the Reich Minister of Finance had participated in this procedure by concluding a corresponding agreement. But this attempt of the prosecution failed even in relation to the first point. The ordinance submitted by the prosecution themselves of 15 January 1940 and the ordinance of 17 September 1940 concerning the handling of property of Polish subjects proved clearly that the Main Trustee Office East was to take over the administration of the estates mentioned in the ordinances as trustees. In con-

* Walter Genske executed an affidavit (Krosigk 331, Krosigk Ex. 191), but he was not called as a witness.

nection with this question I have submitted to the court a detailed affidavit of the former Chief of the Main Trustee Office East, Dr. Max Winkler. For purpose of simplification I should like first of all to quote the following from this affidavit:[1]

> "Because of the number and economic importance of the enterprises and properties belonging to the competence of the HTO, the HTO sought contact with the Reich Ministry of Economy and the Reich Ministry of Finance of its own accord."

It has been proved that at the request of the witness Dr. Winkler the Reich Minister of Finance appointed a Referent for the sphere of activities of the Reich Main Trustee Office East. When this consultant evolved some plans to use the estates administered by the Main Trustee Office East in favor of the Reich, he was relieved of his post at the request of the Chief of the Main Trust Office East. The witness has stated—I quote:[2]

> "Graf Schwerin von Krosigk agreed with my opinion that the funds concerned were under trusteeship and not Reich property, and he promised to instruct the official in his Ministry accordingly."

These directives were actually issued. The former special consultant was relieved and a new Referent appointed who dealt with things in the way described above and himself saw to it that the funds continued to remain the special property of the Reich Main Trustee Office East and were not transferred to the Reich. For purposes of clarification it should be added that the HTO was not subordinated to the Reich Ministry of Finance but to the Plenipotentiary for the Four Year Plan and obtained its directives exclusively from him.

The situation with regard to some other incidents particularly stressed by the prosecution is similar as in the case previously set forth. I have gone into these matters in detail in the closing brief, but I feel that even at this point the general exposition has provided sufficient proof of the fact that the Reich Minister of Finance always adhered to the established rules of law and took all the necessary steps within the framework of his official duties to stop excesses which naturally may occur at all times.

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[1] Affidavit of Dr. Max Winkler (Krosigk 52, Krosigk Ex. 158). Complete testimony of defense witness Winkler is recorded in mimeographed transcript, 2 September 1948, pages 19654–19663.

[2] Ibid.

I. Extracts from Closing Statement for the Defendant Stuckart*

DR. STACKELBERG (associate counsel for the defendant Stuckart): Your Honors!

Apart from Dr. Stuckart's alleged participation in the so-called Final Solution of the Jewish Question and from his alleged membership in the SS, the indictment against Dr. Stuckart only refers to his cooperation in the drafting of laws and decrees and in their enforcement, that is to say to acts which he performed in his official quality as an organ of a sovereign state. Therefore, before all the arguments which may be put forward in his defense, the question arises whether or not Dr. Stuckart is criminally responsible for acts which he performed as a German government official.

A legal consideration of this question must start from the well established principle of international law that international relations exist between states only, not between individual persons or between a state and an individual person. Consequently it was recognized hitherto that international responsibility involves the state only, not the person who acts for the state. Quite recently, the American professor Josef L. Kunz has stated in the American Journal of International Law, volume 41, page 699 [review and notes on *Diritto Internazionale Bellico* by Gieuseppe Vedovato]—

> "* * * positive international law did not know an individual criminal liability of persons, acting as organs of a state * * *."

And in the famous MacLeod case the then American State Secretary Webster recognized the following rule of international law:

> "After the avowal of the transaction as a public one by the British Government, there could be no further responsibility on the part of the agent."

Control Council Law No. 10 establishes an exception to this rule (Art. II, par. 4(*a*))—

> "The official position of any person, whether as Head of State or as responsible official in a Government Department, does not free him from responsibility for a crime or entitle him to mitigation of punishment."

Article 7 of the London Agreement [Charter of the International Military Tribunal] contains a corresponding regulation.

* Complete closing statement is recorded in mimeographed transcript, 17 November 1948, pages 27951–28007. Stuckart's associate defense counsel delivered the first part of this closing and the latter part was delivered by Stuckart's principal counsel. The opening statement on behalf of the defendant Stuckart is reproduced in section V L, Volume XII.

These provisions are supposed not to create new laws, but only to reproduce and to codify international law already existing at the time of their enactment. According to this state of facts the American, British, and French prosecutors, like the IMT itself, endeavored to prove that these provisions do not deviate from international law prevailing that time. Justice Jackson admitted that international law deals with states only, but he added:[1]

> "The principle of individual responsibility for piracy and brigandage, which have long been recognized as crimes punishable under international law, is old and well established. That is what illegal warfare is."

But obviously the IMT did not agree with this motivation for in its judgment it did not refer to it. As to piracy the peculiar situation is created by the very fact that it concerns private persons, who "without being authorized by any sovereign state" commit deeds of violence against persons and things. Thus, the exonerating order of the state is missing here.

The French Chief Prosecutor de Menthon, too, admitted that only states can be bound by international duties in principle—[2]

> "International responsibility normally involves the collective state, as such, without in principle exposing the individuals who have been the perpetrators of an illegal act. It is within the framework of the state, with which an international responsibility rests, that as a general rule the conduct of the men who are responsible for this violation of international law may be appraised."

Article 228 of the Versailles Treaty did not establish either individual responsibility for such action. According to general customs of war, enemy states are authorized to punish individuals under their jurisdiction who trespass against body, life, property, and fortune of their own citizens. This idea is the basis of Article 228 of the Versailles Treaty. It cannot be seen that it created a more extensive individual responsibility for actions of an official quality.

The provisions of Control Council Law No. 10 and of the London Agreement which rescinded the defense of "act of state," therefore are inconsistent with international law universally recognized up to now. They are contrary to the principle *nullum crimen sine lege.*

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[1] Trial of the Major War Criminals, op. cit. supra, Volume II, page 149.

[2] Ibid., volume V, page 389. Quotation is from the opening statement by the chief prosecutor for the French Republic in the trial before the International Military Tribunal.

If this Honorable Tribunal, however, does not agree with this opinion and holds officials responsible under the provisions of Control Council Law No. 10, then it must be stressed that the provisions are an exception to the rule. Exceptions are to be interpreted in the most restricted way only. The provisions of Control Council Law No. 10 therefore are to be limited to that circle of persons who are concerned by its wording and its sense. Individual responsibility, therefore lies only with the "Head of State" and with the "responsible" officials in a government department. Consequently, to ministerial officials, who are not in responsible positions the "act of state" doctrine must apply.

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In 1935 Dr. Stuckart was called into the Ministry of the Interior and appointed Chief of Department I with the sphere of tasks—"constitution and organization of the administration." It was one out of ten departments of the Ministry. Like the chiefs of the other departments, Dr. Stuckart was subordinated to State Secretary Pfundtner and beyond him of course to the Minister himself. Neither the fact that he had already been given the title of "State Secretary" in the Ministry for Education, where he had worked from 1933 to 1934, nor the fact that in 1938 he was formally given this title again, changed this state of affairs. At no time was Dr. Stuckart deputy of the Minister. The prosecution would have spared much time to the Tribunal and to the defense if they had earlier submitted the Document NG–3698, Prosecution Exhibit C–236. In this letter State Secretary Pfundtner deals with the intended promotion of "Ministerial Director State Secretary Stuckart to State Secretary"; he writes:

> "Mr. Stuckart will retain, also in his new capacity as State Secretary, merely the command of the Division Constitution and Administration, including the subdivisions Reich Defense and 'Austria.' I myself remain the sole representative of the Minister for the entire area covered by the Ministry."

The fact that Dr. Stuckart when signing documents now used the formula "As deputy" [in Vertretung] and no longer the formula "By order" [im Auftrag] was not of actual significance. As in the question of the title, we are concerned here with a mere formality without any importance according to the customs of the Third Reich. It is decisive that in all acts of any importance he had to act upon express order of his superiors.

When the Reich successively occupied and incorporated several territories, the Reich Minister of the Interior was appointed as central office for such territories. Dr. Stuckart was made chief of these central offices. This meant that the Minister of the

Interior was given some new tasks and that these tasks were entrusted to Department I, directed by Dr. Stuckart. The central offices were not independent offices and Dr. Stuckart as their chief was not an office chief. Like all other matters of Department I, the current work of the central offices was dealt with by Referenten and by the chiefs of the subdivisions. Their drafts, as far as they were not mere routine matters within the scope of concrete decisions of the Minister, were submitted by Dr. Stuckart to the Minister for decision via State Secretary Pfundtner. Dr. Stuckart was bound by the orders of the Minister; and the State Secretary for the Minister, not Dr. Stuckart, was the central office. The IMT stated:* "* * * he [Frick] was placed at the head of the central offices * * *."

The same is true of his second task. In the spring of 1939 Frick was appointed Kommissarischer Generalbevollmaechtigter Fuer die Verwaltung, [GBV], Plenipotentiary General for Administration, and Himmler was appointed his deputy. Shortly after the beginning of the war Dr. Stuckart was appointed chief of staff of the GBV. The very denomination "chief of staff" leaves no doubt as to the character of Stuckart's task. Like any other staff, Department I of the Ministry of the Interior, as staff of the GBV, was in charge of the technical work of the GBV. The chief of staff had to see to it that the work was performed without friction. It was performed by officials of the Department I. So, there was no special staff, much less a special office. Here, too, Dr. Stuckart was bound by the orders of the Minister in his capacity as GBV and/or by the orders of Himmler as deputy of the GBV. When Frick left the Ministry in 1943, four departments of the Ministry were subordinated to Stuckart. His own subordination to a State Secretary ceased because there was no longer any State Secretary of the Ministry of the Interior. According to the principle *divide et impera,* Himmler as Minister of the Interior, divided the departments of the Ministry between Dr. Stuckart and State Secretary Conti. Neither had to do with the sphere of work of the other one. If either of them was prevented, he was not represented by the other one, but by an official of his own department. Neither one of them was the deputy of the Minister for the whole of the Ministry, as had been Pfundtner. The prosecution hinted that Dr. Stuckart preceded Conti because Conti was no jurist. Such assumption is without any foundation.

It is true that Frick was frequently absent from Berlin and Himmler nearly always. As a matter of fact, Himmler came to the Ministry only a few times and only for a few hours. However, it would be wrong to assume that this made the officials of

* Trial of the Major War Criminals, op. cit. supra, volume I, judgment, page 299.

the Ministry more independent. To the contrary, it was just because of their frequent absence from Berlin that Frick and Himmler secured complete control over the activity of their officials by measures which were more restrictive than if they had been present. All means of communication were employed, including daily couriers, so that not only all important matters, but also many minor ones, could be and actually were submitted to the Minister. Himmler went even further. He established in his headquarters an office for supervising the activity of the Ministry, and it is significant that the members of this office did not come from the Ministry, but from the Party Chancellery. This office not only controlled the activity of the Ministry, but also handled affairs regardless of the competence of the departments of the Ministry.

The picture of Dr. Stuckart's position must be completed by the consideration that the authority and the power, which he had as a department chief, was not supplemented by an office in the Party or one of its organizations. It is true that Dr. Stuckart had an honorary rank in the SS, but this honorary rank did not give him the slightest influence on the attitude of the SS itself, much less on the administration of the State.

Finally, Dr. Stuckart never belonged to the inner circle around Hitler as not even Frick had immediate access to Hitler; it needs no explanation that Dr. Stuckart had no access to him either. As a matter of fact during the 12 years of the Third Reich he participated in no more than half a dozen discussions with Hitler, and this regularly as an assistant to the Minister. Consequently he could not possibly have exercised the slightest influence on Hitler.

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In summary, evidence has proved that Dr. Stuckart was not among those who by virtue of their office or their position had the power and authority to act for the German State with binding effect. Dr. Stuckart, is not among those whom Control Council Law No. 10 deprives of the plea of having acted as responsible. Dr. Stuckart was only a small wheel in the machine of the Third Reich. To him applies the general rule of international law that a person who had been active upon orders of the state, cannot be held responsible.

In his book, Failure of a Mission [G. P. Putnam's Sons, New York, 1940], Sir Nevile Henderson says:

> "It is not the machine which one must blame, but the use to which it was put."

Dr. Stuckart beyond any doubts was a part of the machine, but he was not among these men who used or even misused it. These reasons release Dr. Stuckart from his responsibility before the International Tribunal as far as his participation in legislative acts is concerned. I will not discuss in detail all the other arguments available in great abundance for Dr. Stuckart. They are thoroughly dealt with in our closing brief.

I shall now discuss the following counts of the indictment only: Dr. Stuckart's alleged participation in the so-called Final Solution of the Jewish Question and his alleged membership in the SS.

The prosecution asserts that in the winter of 1941 the defendant participated in setting up a program for the extermination of all surviving European Jews, and in organizing and systematically carrying out such program; that in conferences of the Ministries on 20 January, 3 June, and 27 October 1942, in Berlin, the policy and techniques for the "Final Solution of the Jewish Question" were established and a program for the evacuation of 11 million European Jews to camps in eastern Europe for ultimate extermination.

Evidence proved that this assertion is without any foundation, as far as Dr. Stuckart is concerned. The IMT judgment says:[1]

> "This 'Final Solution' meant the extermination of the Jews * * *."

This statement could be made only restrospectively and only on the basis of facts which had been discovered afterward. The IMT did not say that its interpretation of the term "Final Solution" was generally known and generally used at any time before 1945. Evidence has shown that Dr. Stuckart and the persons around him understood the Final Solution as to mean the evacuation of the Jews from the Reich to reservations [Reservaten] in the East. Whatever Hitler's ultimate plans may have been regarding the Jews, nobody could have thought otherwise, unless he positively knew Hitler's plans. Dr. Stuckart was not among those who had been initiated in Hitler's plans. Hitler himself ordered strictest secrecy about these matters. It is extremely instructive to compare the letters dated 7 June 1941 (*NG–1123, Pros. Ex. 3902*)[2] and addressed by the Reich Chancellery, to the Reich Minister of the Interior, and/or to Bormann, respectively. The letter addressed to Bormann contains the following sentence which is not contained in the letter to the Reich Minister of the Interior:

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[1] Trial of the Major War Criminals, *op. cit. supra*, volume I, page 250.
[2] Reproduced in part in section IX B, Volume XIII.

"For your [Bormann's] own confidential information I may add that the Fuehrer did not agree to the regulation proposed by the Reich Minister of Interior, because he is of the opinion that after the war there will be no Jews in Germany."

Dr. Stuckart had not even been informed about the evacuation measures of the police, let alone the plans and measures for extermination. The prosecution submitted a great number of documents referring to the evacuation of Jews from Germany and other European countries. Apart from the so-called "Wannsee-protocol" the Minister of the Interior was mentioned in only one connection—the evacuation of the Jews from Badenia and the Saar-Palatinate to southern France in 1941.

This very case clearly proves that the Reich Minister of the Interior learned of the measures ordered by Himmler in his capacity as Chief of the German Police only subsequently, after all was over, and that he considered disciplinary steps against Gauleiter Buerckel whom he held guilty of those evacuations.

It is true that once Dr. Loesener told Dr. Stuckart about executions of Jews in the neighborhood of Riga. If Loesener's "condensed "statements in his affidavit (*NG–1944–A, Pros. Ex. 2500*) for the prosecution are supplemented by his statement in his cross-examination,[1] it becomes obvious that Dr. Stuckart did not consider these Riga crimes as part of a systematical extermination, but as arbitrary action of a police chief, which he detested like Loesener.

The witness Dr. Globke testified—[2]

"Yes, I was better informed in many things. I was sometimes surprised how uninformed Dr. Stuckart was."

1939 was a decisive year in the history of the persecution of the Jews by the Third Reich. The racial laws issued up to then aimed at a regulation of the legal position of the Jews in Germany and at their removal from their public and economic positions. In 1939 Hitler, wholly independently from the racial laws and without inner connection with them, undertook a practical solution of the Jewish problem which aimed at a complete evacuation of the Jews from Germany. According to the different character of these two plans, their execution was assigned to different agencies from the very beginning. The legislative measures were taken by the legislative organs; the Reich Minister of the Interior participated therein within the limits of his competence.

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[1] Complete testimony of Dr. Bernhard Loesener is recorded in mimeographed transcript, 7 June 1948, pages 7610–7668.

[2] Complete testimony of the defense witness Hans Globke is recorded in mimeographed transcript, 10–12 August 1948, pages 15424–15491; 15603–15671; 15831–15879.

The practical measures were exclusively placed in the hands of the police. IMT judgment says in section VII (B) :[1]

> "On 24 January 1939 Heydrich, the Chief of the Security Police and SD, was charged with furthering the emigration and evacuation of Jews from Germany, and on 31 July 1941, with bringing about a complete solution of the Jewish question in German-dominated Europe."

Stuckart's absolute incompetence for police matters and in particular for the practical measures of the police against the Jews must be remembered, if one wants to judge in a just manner Stuckart's attitude at the Wannsee conference of 20 January 1942 and in the subsequent period. It must be taken into account that neither formally nor virtually he had the power to interfere with the measures of the police or to prevent them.

The prosecution asserts that a program for exterminating the Jews had been fixed in the winter of 1941. This is contrary to the statements of the IMT. In section VI (E) of the judgment, the IMT says:[2]

> "In the summer of 1941, however, plans were made for the 'Final Solution' of the Jewish question in Europe. * * * The plan for exterminating the Jews was developed shortly after the attack on the Soviet Union."

At the Wannsee conference of 20 January 1942, therefore, no plan for the extermination of the Jews could be made. No further decision could be made either. The execution of the program had been under way for months before the conference. Heydrich[3] wrote to SS Gruppenfuehrer Hofmann—

> " * * * that Jews are being evacuated in continuous transports from the Reich territory including the Protectorate Bohemia and Moravia to the East ever since the 15 October 1941."

The so-called Wannsee-protocol contains no word to the effect that Heydrich had the evacuation and extermination of the Jews discussed by those present at the meeting or that he had passed a resolution on that topic. Heydrich did not need the approval of those present for the execution of the measures against the Jews with which he had been entrusted by Hitler. In particular, the Minister of the Interior and Dr. Stuckart had nothing to do with these practical measures against the Jews.

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[1] Trial of the Major War Criminals, op. cit. supra, volume I, page 265.

[2] Ibid., p. 250.

[3] Reinhardt Heydrich was the predecessor of Ernst Kaltenbrunner as Chief of the Security Service (SD) and the Security Police. Heydrich was assassinated in 1942 by members of the Czech resistance to the German occupation. His assassination led to the order for the complete destruction of the Czech village of Lidice.

It was different with the measures which Heydrich intended against the persons of mixed blood and against the so-called privileged Jews. With respect to these people he had no authority and no order from Hitler or Goering. He could not achieve their evacuation without the cooperation of the Party Chancellery and of the Ministries.

According to the first decree to the Reich Citizenship Law the bulk of the half-Jews and all persons of mixed blood of small degrees were not to be considered and treated as Jews; the same applied to Jews married to non-Jews, the so-called privileged Jews. It was the special duty of the Ministry of the Interior to see to it that these principles were adhered to. If Heydrich wanted to extend the evacuation program to those people, he needed the support by the Ministries, and in particular of the Ministry of the Interior. That is the only reason why Dr. Stuckart was called in to the Wannsee conference.

For this same reason it is highly improbable that Heydrich should have displayed his orders and his plans to a greater extent than would have been necessary. He would have made it harder for the Ministries to agree with his intentions regarding the persons of mixed blood and the privileged Jews. The participants of the conference who could be interrogated state unanimously that no word of Heydrich's intimated that the Jews were to be systematically worked to death in the East or otherwise annihilated. The Tribunal cannot pass over these statements, for as no one can be reproached for mere knowledge, there would have been no reason to challenge the correctness of the protocol unless it really is incorrect. It must be excluded therefore, that Heydrich really made the intimations noted in the so-called protocol. The protocol has not been signed; it is not known who wrote it nor on what basis it was written; neither Dr. Stuckart nor other members of the conference saw it at that time. Luther writes in his detailed memorandum on the Wannsee conference:*

> "Gruppenfuehrer Heydrich stated in this conference that Reich Marshal Goering's order had been issued to him upon instruction by the Fuehrer and that the Fuehrer now had authorized the evacuation of the Jews to the East as a solution [Loesung] instead of the emigration."

When Heydrich made known his proposal to evacuate the persons of mixed blood and the privileged Jews with the exception of small groups and to sterilize the remaining ones, Dr. Stuckart raised serious objections. But Heydrich insisted on his evacuation plans, at least as far as the persons of mixed blood were

* Document NG–2586–G, Prosecution Exhibit 1452, reproduced in part in section IX B, Volume XIII.

concerned. Dr. Stuckart therefore was forced to try another way to frustrate Heydrich's plans. He on his part took up the sterilization plan and suggested sterilization of the persons of mixed blood instead of evacuation. He did not make this suggestion because he considered sterilization to be a lesser evil than evacuation, but because he had previously been informed by Conti that sterilization of a great number of human beings—100,000 persons were concerned by Dr. Stuckart's proposal—was not feasible during the war. The proposal was likely to delay the measures contemplated by Heydrich, and that was all that Dr. Stuckart could and would obtain at this moment. The same is true of his suggestion to evacuate the privileged Jews after divorce only. From the beginning he assumed that serious objections would be raised, in particular by the church, as it really happened later on. Stuckart's intention was again to gain time in the interest of the persons concerned, and he was successful. As a matter of fact, because of Dr. Stuckart's attitude the persons of mixed blood and the privileged Jews were exempted from evacuation, sterilization, compulsory divorce.

Also after the Wannsee conference Dr. Stuckart intervened in favor of the persons concerned. He ordered his Referent to stick to the proposal of sterilization in the conference of 6 March 1942 as long as the evacuation plan of Heydrich was under discussion. Moreover, on 16 March he wrote a letter to Heydrich and to other persons in which he opposed the evacuation in general. Finally, he applied to Dr. Lammers in a personal letter in which he asked him to suggest to Hitler discontinuance of the planned measures and the termination of the current ones. In May 1942 Dr. Lammers informed him that Hitler had stopped the evacuation measures for the duration of the war. Kettner, Stuckart's personal Referent, testified:*

> "Several weeks later we received a letter from Lammers in which he said that Hitler had agreed with the dropping of all measures against Jews and persons of mixed blood until after the war."

But in September 1942 new rumors spread concerning measures against half-Jews. Dr. Stuckart was aware of Hitler's inconsistency. He applied to Himmler in a detailed memorandum, and tried to explain to him, by all means using arguments likely to appeal to Himmler, that a resumption of the evacuation plans in respect of the hitherto protected persons must be prevented at all events. At that time Dr. Stuckart was convinced that the issue was evacuation and not extermination, for one of his main

* Complete testimony of defense witness Hans Joachim Kettner is recorded in mimeographed transcript, 14 and 15 October 1948; pages 25818–25852; 25953–26008.

arguments was that evacuation of the half Jews would drive persons endowed with the gift of leadership to countries hostile to Germany. To use this argument in a letter addressed to Himmler would have been particularly absurd, if he had thought it possible.

Though Dr. Stuckart did not work on evacuation measures at all and did not even know anything about extermination plans, he did all he could to have evacuation measures stopped in order to protect privileged Jews and persons of mixed blood. Not a single murder, not a single evacuation, not a single sterilization, and not a single compulsory divorce can be attributed to him; to the contrary, his intercession saved the life of more than 100,000 human beings marked for extermination by Himmler and Heydrich. As frequently emphasized in this trial, he is to be praised and not to be blamed for this attitude.

Under count eight of the indictment, Dr. Stuckart has been accused of having been a member of the SS, which the IMT declared a criminal organization. This accusation is wrong, because Dr. Stuckart was not a member of the SS within the meaning of the IMT judgment, and furthermore because he was not involved in crimes committed by the SS and because he never learned of crimes systematically committed by the SS.

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DR. VON ZWEHL (counsel for the defendant Stuckart, continuing): May it please the Court. Probably I shall be the last defense counsel to argue in a Nuernberg trial[1] Legal problems have been discussed by my learned friends with more scholarship that I can offer, and the individual features of the Stuckart case are set forth in our closing brief. So I shall not go into detail, but speak generally from the point of view of common sense—insofar as I am endowed with that attribute—and so naturally emphasize arguments which not only apply to my client Stuckart alone but also to the whole ministerial group and in some respects even to all defendants.[2] Their lot is a part of the fate of Germany and of Europe's fate. So Your Honors' findings in this case so heavily loaded with problems may have world-wide repercussions. In my opinion the question persists whether it is earthly possible to a court composed of nationals of states which were at war with the defendants' native country to render an unbiased judgment in respect to political acts committed during, or in connection with this war.

[1] Dr. von Zwehl was the last defense counsel to address any Nuernberg Tribunal orally.

[2] Documents referred to as "Koerner-Stuckart" pertain to defendants Koerner, Lammers, Schwerin von Krosigk, and Stuckart and contain all documents in systematic order which therefore are meant to be read in succession as filed there, independent of sequence of references made in final argument.

Goering's bitter words have been often repeated by Germans and other nationals—"There is only one war crime—to lose the war." But since he said so, many things have occurred to alter fundamentally the relations between the victors and the vanquished, and this Tribunal has emphasized repeatedly that, though carefully considering the former judgments, it is determined to keep its entire independence of approach. So an American court may after all at the very end of these trials achieve the task which seems almost beyond human capacity; to be truly a judge in one's own cause.

There is another fact which makes it difficult for an American to understand the German tragedy. I often hear Americans say: "You European people are always quarreling among yourselves and starting wars for a negligible number of square miles in your ridiculously small continent. Frontiers don't matter and there ought not to be any at all. You stupid folks! Why, it's all civil war. Look at the United States! We have a hell of a lot of different races, colors, creeds. We had our only civil war nearly a century ago." This argument disregards the difference of conditions east and west of the Atlantic.

There is one thing in America that is so sadly lacking in Europe, where we are continually treading on each others toes—space.[1] In 1919, there were ten times more people to the square mile in Germany than in the United States.[2] You can travel from one of the big oceans of the world to the other and from the Arctic area nearly to the Tropics in your country. Further south you pass through states which are also more or less under United States influence. And when you eventually reach the Antarctic you find United States territory again. No wonder you can grow in such world-wide area any plant and find any raw material needed by modern humanity as well as a job, even for the pioneer, who need not discard his nationality and desert his people to get into his proper sphere. Your Honors must bear in mind what you *have* and what we have *not* in order to understand recent German history, the clue to the events that gave rise to the present indictment.

A remote reason for the present misery of Germany is to be found in her history of the period between the 16th and the middle of the 19th centuries. Domestic wars then consumed all German energies.[3]

In the Franco-German war of 1870–1871 (which by the way was declared by France on Prussia and not vice-versa, a fact

[1] Koerner-Stuckart 28a, Koerner-Stuckart Exhibit 31.

[2] Koerner-Stuckart 24, Koerner-Stuckart Exhibit 26.

[3] Koerner-Stuckart 2, Koerner-Stuckart Exhibit 2; Koerner-Stuckart 3, Koerner-Stuckart Exhibit 3.

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easily forgotten by those who complain of the many invasions France had to endure from the East) Germany at last found her unity. The peace of Frankfurt, which ended it, seems extremely lenient compared with the Potsdam Agreement. Even if Germany, for instance, had annexed all French territory east of the rivers Seine and Rhone and expelled the whole population except the German Alsatians and Lothringians, it would not nearly have had the disastrous consequences of the Potsdam Agreement, because France is not overpopulated and has a large colonial empire.

If, by the retrocession of the old German territory between the Vosges and the Rhine to Germany, a wrong was committed, or rather a former wrong righted, is too vast an issue to be dealt with in final argument. In this respect, I refer to the documents submitted by the defense in document books Lammers, Koerner, Schwerin von Krosigk, and Stuckart.

The progress made by Germany from 1871 to 1914 in the field of economy is well known. She even succeeded in building up a small colonial empire. It is a historic fact, recognized more and more, that she did not go to war in 1914 for conquest but rather out of concern for the security of herself and her allies, Austria and Hungary.[1] As to the peace treaty, Germans need only quote what Germany's ex-enemies said about it.[2] It was imposed in flagrant violation of the promises made by the Allies to Germany and to the world;[3] it bred hatred by its humiliating form and the way its signature was enforced;[4] and it disregarded economic, ethnic, geographic, and historic facts.[5]

There was no space in the Germany of the Versailles Treaty, neither physically nor mentally, no prospect of prosperity for the sedate worker, no field of action for the adventurous spirit.

After the collapse in November 1918, Germans first got mad at each other as it mostly happens when people are crowded together without sufficient food. From the Communist revolt at Christmas 1918 to 1932 there was sometimes open and sometimes latent civil war.[6] Meetings of non-Communist parties were broken up, political opponents were knocked down, shot, thrown into the water.

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[1] Koerner-Stuckart 3, Koerner-Stuckart Exhibit 3; Koerner-Stuckart 54b, Koerner-Stuckart Exhibit 60.

[2] Koerner-Stuckart 4–9, Koerner-Stuckart Exhibit 4–9.

[3] Koerner-Stuckart 10–17, Koerner-Stuckart Exhibit 10–19.

[4] Koerner-Stuckart 18–23, Koerner-Stuckart Exhibit 20–25.

[5] Koerner-Stuckart 24–57, Koerner-Stuckart Exhibit 26–63; Koerner-Stuckart 58–65, Koerner-Stuckart Exhibit 64–71.

[6] Stuckart 206, Stuckart Exhibit 47.

There was a culminating point in 1923 when the breakdown of the German currency brought about infinite misery[1] and another in 1931–1932 when the number of the unemployed reached nearly 7 million in a new crisis.[2] The number of lives lost in those internal struggles is incalculable.

Moreover Germany was utterly defenseless, a temptation to any aggressor to invade it.[3] So France and Belgium occupied the Ruhr in 1923–1924;[4] Poland sent strongly-armed units into Upper-Silesia to start a revolt there before a plebiscite could be held[5] and even small Lithuania annexed the Memelland before the latter's fate was decided by the major powers.[6]

For nearly 15 years German Governments tried to obtain by peaceful means a revision of the Versailles Treaty or at least a fair fulfillment of the obligations entered into therein by the victorious powers. In fact, reparation payments eventually had to be dropped after having ruined Germany completely, and seriously affected the economic systems of some of her ex-enemies. But in all other respects, particularly in the sphere of disarmament, all endeavors failed.

In spite of the treaties concluded for the protection of minorities, our countrymen, forcibly deprived of their former German citizenship, were persecuted systematically beyond Germany's new frontiers. We had to look on in impotence. I wonder how an American would feel in an analogous situation!

I understand that this Tribunal comprehends our wish to get out of this desperate position by all means except criminal ones. In a great national emergency, government affairs must be directed by one man. And so they are even in the most democratic countries. The old Romans set an example and also now the United States.

I also refer here to the following lines in [Viscount Harold Sidney Harmsworth] Rothermere's book, Warnings and Predictions [Warnungen und Voraussagen], pages 114 and 115:[7]

> "Czechoslovakia was rounded out on the north by the inclusion of 3¼ million Germans who had hitherto been under Austrian rule, and in the south by the ruthless appropriation of three-quarters of a million pure-blooded Hungarians.

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[1] Koerner-Stuckart 111, Koerner-Stuckart Exhibit 119. (The date of this document should read "1923" instead of "1933.")

[2] Koerner-Stuckart 112, Koerner-Stuckart Exhibit 120; Koerner-Stuckart 105, Koerner-Stuckart Exhibit 113.

[3] Koerner-Stuckart 122, Koerner-Stuckart Exhibit 131; Stuckart 206, Stuckart Exhibit 47.

[4] Koerner-Stuckart 109, Koerner-Stuckart Exhibit 117.

[5] Koerner-Stuckart 110, Koerner-Stuckart Exhibit 118; Koerner-Stuckart 106, Koerner-Stuckart Exhibit 114; Koerner-Stuckart 107, Koerner-Stuckart Exhibit 115; Koerner-Stuckart 108, Koerner-Stuckart Exhibit 116.

[6] Koerner-Stuckart 101, Koerner-Stuckart Exhibit 109; Koerner-Stuckart 102, Koerner-Stuckart Exhibit 110.

[7] Extract from an article published in the London Daily Mail on 12 February 1937.

"These two solid contingents of foreigners have since been held as prisoners of Czechoslovakia. They were handed over to the Czechs with no more consultation than if they had been cattle, and have been treated by the Czech authorities with no more regard for their rights and feelings.

"As captives of a race notorious for petty meanness they have been subjected to cold-blooded expropriation and oppression. Every effort has been made to suppress their language, and the Czech Police tried to break their spirit by systematic persecution.

"Last year a Defense of the Realm Act was passed which exposes any German or Hungarian to instant deportation from his home on the frontiers to the interior of the country at the whim of the local Czech authorities."

On New Years Day, old President von Hindenburg and all Germany with him were looking out for such a man. I think the evidence has clearly shown that the circumstances as well as the German Constitution left no choice. Hitler, being the leader of the strongest party by far, had to be appointed as Chancellor if a new and more terrible civil war was to be avoided. None of the defendants was involved in this appointment but since the prosecution reproached them for having served this man, the defense submitted evidence as to the opinion prominent foreigners had in respect of his personality. Men like Viscount Rothermere, whose judgment was based not only on press reports but also on personal contact, wrote enthusiastically about Hitler as late as 1939.

No misgivings could arise from the Party program which was by no means criminal but even stressed that the Party advocates the standpoint of positive Christianity. All crimes committed later were perpetrated not in accordance with, but in contradiction of, this program. The struggle to get free from the "chains of Versailles" was considered as justified even by Germany's most prominent ex-enemies. It is true that the claim that Jews should be allowed to live in Germany only as guests seemed rather radical. But foreigners used to be treated in Germany with the consideration that is customary in civilized countries, and moreover the tendency of the political parties to go to extremes in their programs in order to attract the masses seemed to make it next to certain that this principle would not be carried out literally. The anti-Semitism of the NSDAP was in the beginning not the blind and fanatic racial hatred to which it later degenerated in the minds of some extremists, unfortunately those who had the power to satisfy it. It is really a tragedy that anti-Semitism

was brought about in Germany as elsewhere in the last analysis by Jews. Mass auto-suggestion added the article [the] and did not incriminate some of the Jews but "the" Jews. These three letters "the" in English or "die" in German, the indictment of "the" Jews formerly and "the" Germans now, again the tendency to generalize, has brought infinite misery over mankind in all times and cost millions of lives. In fact, in all Communist revolts in Germany, Jews played a leading part; in any economic crisis Jews managed to make money at the expense of non-Jews; in many leading professions Jews were in an overwhelming majority, though only little more than 1 percent of the population was Jewish. Lack of modesty and tact, an arrogant sneer at ideas dear to the bulk of the German population did a lot of harm, to the desolation of all decent and sensible Jews. When a Jewish Professor in Heidelberg said that German soldiers killed in action during the First World War had "died on the field of dishonour," what must those words have meant to a mother, a father, a wife, mourning for their son or her husband who had given his life for his country and a cause he believed to be just. Such occurrences finally led to a fanaticism which did not admit that "there must be good Jews because Jews wrote the Bible," but said that "the Bible must be a bad Book because written by Jews."

Racial deficiencies, like qualities, do not show with equal intensity in each individual and in exceptional cases may be lacking altogether. National virtues are as a rule an adequate compensation for national vices. But let us assume now that in the United States the majority of all professions as lawyers, bankers, doctors, managers of theaters, editors, etc., and even sometimes all these positions, were taken by American citizens belonging to a minority race; for instance, Heaven forbid I won't say "Germans," but say Indians or Chinamen, both peoples of a very ancient and high culture, that these Chinamen, though continually emphasizing that they were Americans, really develop very un-American ideas, act accordingly and have but a smile of pity for anybody still sticking to the way of living and thinking you believe to be proper. Now don't you think that under these circumstances some friends of yours might say: "Something must be done. The Chinese ideas and ideals may be all very well for the Chinese, but we object to our way of life being ridiculed by people who remained aliens at heart." These people are, say, 1 percent of the United States population, they might be granted say, up to 4 percent of leading positions, but not 60 percent or 100 percent as they actually have! Now would you think that the ideas of these friends of yours, you may agree with them or not, are criminal, that they are likely to lead to the looting of Chinese

property, mistreatment, deportation, mass extermination of Chinamen? Wouldn't you rather believe that such comparatively mild restrictive measures might prevent rather than promote such outrages? The prosecution's theory that anybody who was in any way involved in restrictive measures against Jews is to be considered as an instigator of the horrors committed during the war by a handful of maniacs is untenable. How could the members of a legislative body in one of the United States of America, who voted (unconstitutionally perhaps) for segregation and similar measures against colored people in their state, be held responsible on these grounds for the lynching of a Negro which occurred later!

After Hitler had been appointed Chancellor, the first measures taken against Jews were at least tolerable. In many leading professions the percentage of them who remained in their former positions was still considerably higher than the percentage of Jews in the population of Germany. Those who had special merits, particularly veterans of the First World War, were allowed to remain in office. For the rest there were attempts to operate segregation but not oppression. The Zionist movement even met with sympathy in certain Party circles.

On the other hand the achievements carried through by the new regime were astounding. Unemployment, chief source of all internal troubles, decreased rapidly and vanished altogether after a few years. No more clashes, no more fighting in the streets, no more strikes. Germans still had to work harder than most other Europeans but the time of sordid misery seemed to be over. "Strength through Joy," the great holiday organization, procured to every German worker recreation, to many thousands; even cruises in the Atlantic and Mediterranean on large ships built for the purpose.

When Hitler began to build up the new Wehrmacht the nightmare of defenselessness was taken from the German people. Now it seemed to be possible also to discuss the revision of the unjust territorial clauses of the Versailles Treaty by peaceful means. Only a state which was respected could hope to obtain it.

The people in Austria, for instance, always had been Germans and were enthusiastic about the reunion with the Reich. But would all the great powers have agreed with us so readily to the Anschluss if they had not felt that it was the fulfillment of a real desire of the German people, both in Austria and the Reich? It is absurd to call this action of the German Reich "rape." When the Austria film was shown, this Tribunal could see and hear that the "victim" was delighted. Such things are said to happen sometimes.

When speaking of the cessions of the Sudetenland and of Memel it is generally overlooked that both were carried through not only by irreproachable international treaties but also in perfect conformity with the right of self-determination, that in both cases a wrong was righted and justice restored. So what the German people and many foreigners saw as the result of the first 6 years of Hitler's rule was hardly anything but success. Of the "dark side of the moon" Germans knew very little. It is true that a feeling of uneasiness and even disgust followed the purge of 30 June 1934. However, there was something to be said in mitigation. The victims, of whom the most conspicuous had not a very high moral standard, had not been shot offhand but after a trial by drumhead courts. The general impression was that Hitler, appalled by a mutiny started within the ranks of his heretofore most faithful followers which might have frustrated his whole work, had passed the limits of justice in a fit of comprehensible rage. Such regrettable occurrences do happen in all revolutions and the National Socialist revolution could still claim to have fewer victims than any other in history. For many years the death toll taken by street fighting and political murder had been hardly less and sometimes heavier than on 30 June 1934 and the following days.

After the cession of the Sudeten territory nobody doubted that also the last and most vital territory revision, the adjustment of the frontiers in the East, would be accomplished by peaceful means. How could one presume that the man who had achieved what Hitler did would commit in the future not only crimes but inconceivable blunders, nay, acts of outright lunacy? How could one presume that the man who exalted peace and understanding between European nations wanted war for war's sake in false romanticism, that his almost superstitious opinion that next to all evil in the world came from the Jews would make him blind to all considerations not only of decency but also of wisdom, that he, an eager student of history, believed a country in Germany's position could keep conquests made by the sword without also making moral conquests?

Who had any knowledge of his said belief that only ruthless brutality and fraud would lead Germany to the position he wished her to take? Practically nobody, for Hitler realized that the Germans would draw away in horror from such policy if they knew. He therefore had the worst of it carried through under a veil of secrecy so masterfully woven that its description leaves persons incredulous who have not experienced it.

How the creation of the Protectorate Bohemia and Moravia was brought about only those know who had been present at the

meeting of Hitler and Hacha in the night of 14–15 March 1939 from beginning to end. All the rest, including Stuckart, knew no more but that the occupation of the rest of the Czechoslovakian State had been carried through pursuant to a proper treaty signed by the two governments concerned.

Now it was not at all unlikely that the Czech Government, after Slovakia had declared her independence, soon had no other way than to return to the German Reich (to which Bohemia and Moravia had belonged for centuries) in order to avoid political distintegration and economic ruin.

If the evidence submitted by the prosecution was complete—of course, it isn't and it can't be because the archives of the Foreign Office in London and of the State Department in Washington, of course, are secret—it might seem that the war against Poland (and so the Second World War) might have been avoided without Germany's waiving her just claim for a revision of her eastern frontiers if Hitler had shown patience. True, patience required a considerable amount of self-control when every delay meant further sufferings and even loss of life for the German minority in Poland, when the very moderate German demands—reunion of the ancient German city of Danzig with the Reich and the grant of an extraterritorial communication with East Prussia—were met by the Polish Government with the official announcement that the further pursuance of such claims meant war. On the other hand there were the apparently sincere endeavors of Britain to bring about once more an understanding with Prague after the Munich Agreement. It was too late. Twenty years of vain struggle against the Versailles Treaty and its consequences had so embittered Hitler that ruse and force became the only means of his policy. I should not say he was "determined to prove a villain," like Richard III, but guided by passion, not by reason, he missed a unique chance for himself, for Germany, and for Europe, and was dragged gradually into crime and madness. Nothing short of a revolution, then doomed to certain failure, could have stopped him.

Of the diplomatic activity preceding the outbreak of war Germans knew what they were told officially, except those few who were directly concerned with foreign politics. The chief of a division in the Ministry of Interior like Stuckart certainly did not belong to those few men, and the title of a State Secretary which the Third Reich, very liberal in that respect, had conferred on him did not procure him any additional information. For civil servants of the level of his rank and position his case is typical. And even if he had known that the war against Poland was an aggressive one, what could he have done about it?

In my opinion there was only one aggressive war if any. All the following German moves were but the unavoidable military consequence of the war against Poland and the declarations of war by Britain and France which followed.

The contention that Germany started further aggressions in order to conquer the world or at least the European continent is erroneous. After a campaign had been successfully terminated the idea to keep part of the territorial booty came naturally to the greedy unwise, but even Hitler was not so mad that he did not wish to digest Poland in peace after having swallowed it. In fact, he made a peace offer in a public speech after the Polish campaign and another one after the campaign in the West. The basic scope of all campaigns Germany started after the invasion of Poland was to prevent defeat in the struggle against Britain, France, and their future prospective allies. Both countries had declared war on Germany, and French troops even had invaded German territory in the Saar Valley.

What would any other statesman have done under the circumstances after the rejection of his own peace offers?

So the German-Polish war really set loose the avalanche. To do this might have been Hitler's guilt. All that followed in the line of warfare was fate. As the war went on, the mental attitude of the Germans at home was determined by what they heard about the war. Defendant Kehrl testified in the witness stand how German front troops won the hearts of the French people in 1940. As I had the honor to belong to these front troops in both wars and was with them in the French campaign, I can but say: "So it was." And it was so elsewhere, even in Russia. The front troops were on the best terms with the population. There was no looting, no mistreatment, and only very isolated cases of rape which was generally punished by death.

Now that's what the German people at home heard from their relatives and friends who were in the front lines, soldiers who were just as convinced that they were fighting for justice, for something very similar to the late President Wilson's ideals, as were the GI's or the Tommies. Was a person in a responsible position at home to forsake these men, risk not only concentration camp but also the shame of being a traitor because later dark rumors sometimes arose about German atrocities?

Behind the front another, sometimes repulsive, work was done. Pursuant to the Allied declaration of Casablanca in January 1943 defeat meant unconditional surrender for Germany. Now, anyhow, the war became a defensive war for us, a desperate fight for freedom and existence. More resources, material, and men, had to be taken from occupied territories to avoid the catastrophe.

A fierce struggle began between the resistance movement and German SS and police. Outrages were committed on both sides. Little of these events was known in Germany and if Germans heard of atrocities said to have been committed on our side it was easy to make them believe that it was but mendacious enemy propaganda since too many lies of this sort had been told about Germany during and after World War I.

I now pass to the question of what kind of acts, committed by Germans in the course of war, are not only morally reprehensible but criminal.

First of all, I want to emphasize that practically no German wants persons to get off unpunished who, apart from Control Council Law No. 10, are criminals under common law. So the man who sent innocent people to the gas chambers or tortured them—Your Honors may believe me or not—these criminals to whom undoubtedly Dr. Stuckart did not belong (and according to the picture I get from the whole trial also none of the other defendants) would have been punished by German courts for such essentially un-German acts if Germany had won the war, perhaps not during Hitler's lifetime but surely after his death. As to such offenses, Control Council Law No. 10 in fact only repeats provisions of the law already in force for centuries in all civilized countries. Now, if it is held that German individuals who committed such crimes cannot escape punishment by showing that similar crimes were also committed by individuals belonging to the Allied nations who are not punished for these offenses, we see the point.

On the other hand, the most sagacious argumentation cannot disprove the fact that Control Council Law No. 10 is a bill of attainder insofar as it introduces the conception of a "crime against peace" punishable if committed by an individual. War "as a means of policy," that is the governmental acts which started it, was "outlawed" by the provisions of the Kellogg Pact but none of the signatory powers enacted a law providing for a punishment of the individual contravening such provisions nor was it even suggested at the conference preceding its signature that this should be done. If a new war started there would be no legal grounds to punish offenders without a new law because the appliance of Control Council Law No. 10 is limited to World War II and nationals of the European Axis states. Now if this is not a bill of attainder as it is prohibited by the American Constitution I do not know what a bill of attainder may be. It makes no difference if such a law is inspired by a high feeling of morality. The issue is not whether an act was indecent or immoral but whether it was legally punishable at the relevant time. The con-

ception of what is moral and what is not varies considerably between countries and generations. Even the now repealed Nazi law made an act punishable without a specific legal provision only if punishment was required by "the sound sentiment of the people in accordance with the basic idea of an existing law."

But insofar as Control Council Law No. 10 creates new law it is not even in accordance with the most elementary principles of justice recognized in all civilized countries, to wit: equality before the law. This is clearly the case as the law is directed against the members of the European Axis exclusively. So, if a non-German has committed an act, made punishable by the provisions of this law only, he would be exempt from punishment, not only because victorious powers don't as a rule prosecute their own nationals for such acts, but simply because there is no appropriate law. And this is certainly material.

There are further objections. It may not be a good defense for a German to state that crimes like those he is indicted for have also been committed by individual foreigners who are not prosecuted. But there is a difference if the governments of the victorious nations themselves order or approve after the war acts which they consider as illegal when committed by their former enemies during war. In this case one may quote the words of Christ from the Gospel of St. John: "He that is without sin among you, let him cast the first stone."

By the Potsdam Agreement, as already stated in Dr. Seidl's final argument, about 15 million Germans were driven from the soil which had belonged to them and their ancestors for many centuries and partly had never belonged to the successor State before. The well-to-do and the people who had been living under modest conditions all lost their entire property. None was so poor that his former situation did not seem paradise to him after he had been driven out. They left as beggars, all alike, and were driven into an area which was already crammed with other beggars and the most badly stricken country one ever saw in history. This was not resettlement because resettled persons are supposed to get a new home however poor in the country they are sent to; it was a deportation under the most unhuman conditions to an area which had already more inhabitants than it could feed; it was spoliation and looting on a gigantic scale, and an act of imperialism never experienced since the fall of Carthage. The number of German lives lost in this operation is estimated to be about 6 million—old people, sick people, children, pregnant women who could not stand the transport, people frozen to death when driven out in winter, persons shot by guards when desperately attempting to defend the last miserable remnant of their

effects, and the innumerable suicides. These expulsions were ordered when victory was won by the eastern partners of the Allied Powers, not under the pressure of wartime necessity as the German measures charged in the indictment. I have no doubt that the British Prime Minister and the President of the United States, though they probably did not realize the full extent of the catastrophe to be caused, had strong misgivings when signing this agreement. But what difference did their reluctance make to the refugees? These two statesmen were responsible only to their people? If one of them had refused to sign he would not have been prosecuted for disobedience like a German civil servant. Still they did sign. This instance shows how easily the most well meaning men can get involved in an action which has consequences too horrible to be simply called a crime.

As for the so-called slave labor, Your Honors certainly have judicial knowledge of the fact that after the unconditional surrender of the German forces many millions of German prisoners of war were, and to a large part still are, kept in captivity, obviously to be employed solely as workers. This attitude cannot be justified by the argument that under the provision of Article 75 of the Geneva Convention prisoners of war are to be repatriated within the briefest possible time after the conclusion of peace. The meaning of this provision is clearly that prisoners of war are to be held in custody only to prevent them from joining again in the combat. Since this danger was entirely averted by the collapse of Germany, German prisoners of war ought to have been discharged and repatriated immediately after the cessation of hostilities. Considerations of war economy must be disregarded when war is over.

During the war the situation was different. By the introduction of total war the provisions of the Hague Convention have not become inapplicable but they have to be adapted by interpretation to the new conditions of warfare. When the supply of foodstuffs and other raw material as well as manpower was no important factor in warfare they could be protected by international agreement as far as the private individual could dispose of them. But since the First World War, conditions have changed in a way which could not be foreseen when the Hague Convention was signed. The available quantity of the above named essential elements of warfare having become limited in view of the enormous demand, the Central Powers during World War I, and practically all belligerent states in World War II, subjected them to planned economy. Even when such material was not actually expropriated it had to be held at the disposal of the government which directed the way in which it was to be employed. There-

fore, it was no longer the free property of the individual which Article 46, paragraph 2, of the Hague Convention intends to protect, but virtually state property and war material which may be requisitioned under the provisions of Article 53 of the Hague Convention. In this interpretation Britain took a lead in the First and then again in the Second World War by cutting off all supplies of foodstuffs for Germany even if they were to be imported via a neutral country, thereby creating famine in 1917–1919. If Germany availed herself with access to the resources of occupied countries to prevent such disaster during World War II, this was not only an act of self-defense or a reprisal but it was legal also under the provisions of the Hague Convention as they had been interpreted previously by her enemies. A planned economy including the occupied countries with its unavoidable hardships was, under the conditions created by the enemy, necessary also in the interest of the population of the occupied territories themselves. These people had to be fed, and so manpower had to be directed, in agriculture especially, where it was most necessary. This might have been a crime against humanity if the population of occupied territories had been starved out. It has been shown by the defense that the starvation of the inhabitants of occupied territories and of foreign workers in Germany is a myth, and that all these people were considerably better fed than the Germans in the western zones during the first 3 years after the collapse could be fed. It is natural that bottlenecks occurred, in particular during the last few months when Germany's economic life disintegrated under the bombs of the Allied air force. Not all the hardships foreigners in Germany had to endure in March and April 1945 were due to cruelty or criminal negligence of their guards. Even the American Army with all its resources had difficulties to feed its prisoners sufficiently during the first months after the war was over.

The Hague Convention was meant clearly to ban from warfare all hardship which did not (or only insignificantly) serve the scope to break the armed resistance of the enemy. None of the contracting powers ever agreed to waive the use of an effective weapon. Between defeat or a considerable prolongation of the war on the one hand and apparently illegal action on the other, leading statesmen and commanders, also Americans, invariably chose the latter anywhere. If it were different no atomic bombs would ever have been dropped on Hiroshima and Nagasaki, and German civilians for example, the more than 100,000 refugees at Dresden camping in a public park, the farmer in the field, the passenger in an ordinary train, children on the way to or from school, would not have been killed by the weapons of the Allied aircraft.

But be this as it may, the Potsdam Agreement and the retention of prisoners of war show that neither deportation of innocent people, nor their total spoliation, nor their employment far from home, and in confinement for forced labor, was considered as a crime or even illegal in 1945 and later, for it cannot be assumed that the leading statesmen of the main Allied Powers should have committed illegal acts, when signing treaties meant to restore peace and justice. If so, similar measures taken by Germany under the pressure of wartime necessity cannot have been criminal, as such, though cruelties wilfully committed in the execution of such measures are of course to be punished severely.

But this is not the last objection. As to aggressive war the situation is simply grotesque. It has been shown that Soviet Russia, one of the Powers which enacted Control Council Law No. 10, not only committed identical acts but was an instigator, perpetrator, and abettor of the very acts to be punished under the provisions of this law, and participated nevertheless in the appointment of the judges who were to try her accomplices. If these blessed Germans have the cheek to speak in this connection of a "biased indictment" are they really so much to be blamed?

The delicate question whether a court is to apply the provisions of a law which violates basic principles of justice has been dealt with by Military Tribunal III in the Justice case—for German judges.

I will read my footnote here.

1. If Military Tribunal V states in its judgment in Case 12 that according to basic principles of law no defendant can exonerate himself by showing that another has committed an identical act for which he is not punished on factual grounds this is undoubtedly true. But this is not the point. The question is whether an act can be punished—

(*a*) If an analogous act is committed later by the government of the legislating state officially as a lawful act or,

(*b*) If the government of the legislating state has instigated within its competency the perpetrator to commit the allegedly criminal act.

I think no unprejudiced persons, whether a jurist or not, would call punishment justice in such case. If this Tribunal agrees with my opinion the further question arises whether this violation of a basic principle of justice does not invalidate Control Council Law No. 10 entirely. If so, the commission conferred upon this Tribunal would be ineffective and the latter would have to dismiss the case on the grounds that it has no jurisdiction to deal with it.

But these legal questions may remain unanswered if none of the defendants is guilty under the provisions of Control Council Law No. 10. I discussed them for the sake of completeness though the defense has shown that Dr. Stuckart is not responsible for any of such acts.

Now in its opening statement the prosecution said somewhat sardonically:

> "No doubt, we will be told in this case, as in others, that it is other men * * * who are responsible for all these acts we have charged as crimes * * *."

In fact, the Tribunal did hear this defense that "somebody else did it," from all the defendants. This is not just an easily found subterfuge; but the reason of it is the fact that the outrages at which the German people are just as much horrified as the rest of the world, were committed, as I stated before, in secret by a small number of fanatics. Is it so extraordinary that the bulk of the German people, to whom Dr. Stuckart also belongs, had nothing to do with these events? On the contrary, it would be inexplicable if it was different.

I hope Your Honors will not reproach me for undue familiarity if I mention that Anglo-Saxons, to whom the citizens of the United States belong by language, culture, and mostly also by descent, are first cousins to the Germans, let alone the high percentage of German blood in many of the states. I believe that since the times of General von Steuben and later Carl Schurz, many Germans who came to the United States have rendered services to your country. Is it probable that they were so much different from the average German at home? Even in the most respectable family there is frequently somebody who goes wrong. But is it to be believed that the people of Duerer, Goethe, Beethoven, the brothers Humboldt, and so many other eminent artists, poets, musicians, and scientists, or a substantial part of them, suddenly became a gang of criminals?

No, Your Honors, the Germans as a whole are no worse than the other civilized nations. Please reconstruct the position in which Dr. Stuckart was, and ask yourselves if the average American would and could have acted differently under the circumstances.

In any country in the world you can find some men to do a dirty job, particularly in a country deeply shaken by a lost war, misery, and revolution. No wonder that the maniacs who thought such a dirty job necessary also found them in Germany, particularly since only very few were required, thanks to the wonderfully effective means for destruction which modern science has

invented and the secrecy which protected the perpetrators even from moral blame.

Of all Germans of all German classes, Dr. Stuckart and his class so largely represented in the dock were the least likely to belong to these criminals, their abettors, or accessories. The latter, like Hitler himself, had been politically persecuted, socially and morally uprooted, driven out of work. And then "drink and the devil have done for the rest," as the sailor sings in Stevenson's "Treasure Island." These men harbored hatred and spite against anybody whom they rightly or wrongly supposed to be responsible for their past sufferings, chiefly of course, the "Jews." Dr. Stuckart undoubtedly had a very hard time after he had left school, but he never lost a solid ground for his existence. With extraordinary energy he mastered his fate, and was certainly much too intelligent to take revenge for any hardship he had to endure on a vaguely defined group of people. He had, like most of his fellow civil servants, a constructive not a vindictive mind.

As to the charge of having prepared aggressive war, the case is just as clear. Why on earth should men like Dr. Stuckart have wanted war? The wish that a war should break out may come from ambitious generals first of all. As a matter of fact all German generals were strongly opposed to war, except the one who had been such a good corporal in the First World War and became such a disastrous general in the Second. The wish may further be found in young and enterprising men of the pioneer or adventurer type in a country where practically no other way is open to prove their courage, as was the case in Germany after the wise men of Versailles had carefully closed every safety valve of the boiler. And thirdly, there might have been—and there were—the men I just mentioned who had a wretched time in the twenties and the early thirties and were determined to have a good one now, who in spite of their Party membership could not get on at home in the long run because they had neither the morals nor the brains, and now hoped for an estate or some other big job somewhere in Poland or in the Ukraine. Dr. Stuckart as well as his fellow civil servants had nothing at all to win by an ever so victorious war. They had the job they liked and were interested in.

Their field of action was not likely to be increased. There were too many others eager to get good jobs in new territories. They had another reason not to desire war. When a country is fighting for its existence, the GI or the doughboy is the hero of the day, the civilian is considered just a poor guy. And with all that, civilians in the big cities were worse off during the later years

of the last war than we were at the front. I for my part would much rather live again through those days in the Liri Valley in 1944 (it was a hell of a fire we got from the American artillery there) than stay in an air raid shelter in Berlin during an attack by super fortresses. Dr. Stuckart, like other civil servants, was definitely earmarked to be and remain a civilian as he was 37 and had not been drilled as a soldier when war broke out. His endeavors to be discharged in order to join the Wehrmacht failed, because no suitable man could be found for his main task during war, a kind of nightmare to the responsible person, *viz*, to direct the millions who had lost their homes in Germany to areas where they could find accommodation.

So Dr. Stuckart would have acted most foolishly, nay, incomprehensibly, if, knowing of the planning of an aggressive war, he had not used every power he had to prevent it; and I think the Tribunal certainly has the clear impression that Dr. Stuckart is no fool. He could not react as he neither had the knowledge of any plans for aggressive war nor the power to do anything against them if he had known of them.

For all that, the prosecution tries to connect Dr. Stuckart with aggressive war. I quote but two examples—the Protectorate and Austria, where he cooperated in the drafting of the enactments which were to give the future relations of these territories with the German Reich, already determined in the political and military sphere by Hitler, their legal form.

Now I think that also the United States sometimes concluded treaties with smaller states by which the latter were brought under her supremacy, of course entirely to the benefit of the population concerned, but, as it happens mostly in such cases, not to their absolute delight. Let us now assume a case where the United States Government had strongly urged on the government of a smaller state the conclusion of such a treaty—I am not sufficiently acquainted with American history to assert that such things actually happened—and the American Secretary of State had told the appropriate subordinate civil servant to have drafted in the latter's division the bill to be submitted to Congress in view of the new legal status. Now supposing this subordinate had answered: "I am sorry, sir, I cannot obey your orders, because I am afraid that treaty has been brought about by pressure." Would not his superior then have said: "What the hell, man! This is no concern of yours. You mind your own business, and I will mind mine." In the Austrian case it is more difficult to make Your Honors understand, as a similar situation could not arise for the United States. One would have to imagine the following situation: a coalition including all great powers in the world has, after

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a fierce struggle, overwhelmed the United States and imposed on her a treaty made after the pattern of the Versailles Treaty giving Mexico, Texas, and a corridor a hundred miles wide to Charleston, South Carolina just for an access to the Atlantic, etc.; and enforcing the dissolution of the union between California and the United States. I take California as an example because I understand that it is one of the most beautiful American states, just as Austria is one of the most beautiful German countries. Now please imagine that after many desperate attempts of the Californians to reunite with the United States had failed in consequence of foreign pressure, finally a government had been formed there which was determined to effect the reunion. Imagine further that the American President—take old Teddy Roosevelt for instance—then said: "I won't have any nonsense. Before foreign powers can interfere or the small reactionary clique which is against reunion can cause mischief, American troops are to move in." Californians are of course crazy with enthusiasm, and GI's are covered with flowers. A plebiscite is prepared to decide definitely about the reunion. And now again the conscientious civil servant, when ordered to prepare the appropriate laws, says to the State Secretary: "Sorry, sir, I admit the reunion was the most ardent desire of all Americans in California and outside. It is in the strictest conformity with the principles of self-determination, since it is to be submitted to the free vote of the Californian people. But the invasion of California by American troops was an act of aggression. Moreover, I am afraid that some day California might be used as a base for an American attack on Japan. Therefore, I must refuse to cooperate even in the mere drafting of these laws." I think the American State Secretary would have moved to have this man committed to a lunatic asylum.

The attempt of the prosecution to drag in the most remote and harmless facts in support of the indictment is certainly due to a certain principle. As many Germans as possible are to be punished for deterrent. Now, Your Honors, the assumption that the penalties inflicted for war crimes are an effective deterrent is erroneous. The only way to prevent such terrible things happening again is to make a good peace, that is to say, a peace which is just the contrary to the Versaille Treaty, not a still more unjust treaty as some persons ill-advisedly suggest. Now this is not up to the Court. Unfortunately, it does not even seem to be up to the American and British Governments because somebody else thinks different. Most unfortunately. But I think the judgment of this Tribunal may be a step further towards this peace of justice.

More sorrows may have to be gone through before we get this "good peace" which gives *sum cuique,* his share to everybody. The patient "humanity" is very ill since some of his organs do not cooperate properly. The question is whether he can be cured without an operation and, if not, whether he can stand once more the surgeon's knife. I recently read the following statement: "Where no possibility exists to shake off the burden of the *status quo,* we shall have war, and perhaps, if it is the only way, we ought to have it."

Was it a dreadful militarist who said so? No, it was the American Chief Prosecutor in the IMT trial, Justice Robert H. Jackson of the Supreme Court of the United States at a lawyers' meeting in Indianapolis. No people can desire more ardently than the Germans that this conflict may be avoided, since in our present condition we would risk to be squashed defenselessly between two giant tanks. If it did break out, I believe that with the exception of a slight minority, our hearts would not be with a government which has cut a pound of our flesh, but with those who as a people—whatever mistakes we may think have been made by some of their individuals—helped us most generously.

To gain victory in such an apocalyptic struggle, even the most powerful nation in the world will need the most strict discipline, not only in its armed forces but also in its administration. And such discipline might seriously be shaken by a judgment such as the prosecution wants to be passed. If legal advisers in a department (under Hitler even most ministers were no more than that, let alone the chief of a division in a ministry), if these men are to be held responsible for the drafting of decrees even if they did not enact them, for signing or cosigning them on the explicit order of their superior, and perhaps for their mere participation in meetings where such decrees were discussed, I do not see how democratic countries can be governed in such troubled times as ours. The Soviet official will certainly not hesitate to obey orders (nor could he if he wanted to), but a civil servant of a western state, including America, may be hampered in his activity by the most serious misgivings if he is to be held responsible for the execution of an order of his superior in case it should be considered as illegal under international law. Now, how great the patience of the United States may ever have been, Soviet Russians (and perhaps some un-American Americans also) would certainly consider a new war as an abominable aggression of the capitalistic states led by America against a country ruled by the most peaceful of all governments. So the American civil servant, poor man, who participated in the drafting of a decree concerning in any way, for example, the fabrication of atomic weapons, if he

had the misfortune to fall into the hands of the enemy, could expect an indictment with three counts.

Count one—Crime against peace, because "defendant certainly knew that this essentially offensive weapon was to be used in an aggressive war."

Count two—War crime, since not only combatants but forcibly hundreds of thousands of civilians, among them many women and children, were killed by the atomic bombs as was to be foreseen with certainty.

Count three—Crime against humanity, committed by the infection of the whole bombed area, perhaps for generations, and the destruction of crops, and so forth, and so forth.

Your Honors: The standard of responsibility set up by the prosecution may not even do for the land Utopia, let alone the world we are living in. If the subordinate is to investigate whether the decree or ordinance for which he is to submit a draft might harm human beings and to refuse cooperation in the affirmative, anarchy in the administration is certain. It is vital that only the man who gives the order is responsible because as a rule he alone can be judge of what is to be done. All one may expect from a subordinate is that he submit his misgivings, if any, to his superior.

Dr. Stuckart did considerably more than this. The defense has shown that he did his best to frustrate any measure which might violate the rules of decency or morality, whenever he was able to do so. No wrongdoing would have been avoided if he had not been in office, but hundreds of thousands of human beings who might have met a terrible fate would then not have been saved, thanks to his activity. My associate, Baron von Stackelberg, already mentioned Jews and persons of mixed descent. But there were also the millions of refugees, Germans and non-Germans, of whom he took care and of whom many might have died but for the action of a person so efficient and so thoroughly acquainted with the organization of this work of charity as he was. There were other millions whose lives he could not save, because he did not even know about their doom and, if he had, he would have been powerless to help. But is a man who rescued a dozen of human beings in a shipwreck to be blamed because hundreds were drowned at the same time somewhere else where he was not even present?

I think Dr. Stuckart could well repeat Socrates' motion who, when asked what punishment he deserved in his own opinion, answered—"To be fed in the Prytaneion." Your Honors knew that Socrates' motion was denied. "Well," I might say, "he had not the chance to be tried by an American court of our days."

You must not believe that I imagine the Tribunal's favor could be won by flattery. I must say, however, I am convinced that the judgment of this Tribunal will not, at this most unfortunate moment, needlessly reopen wounds which are just begnning to close, but be of the human comprehension we sorely need. For if we don't find justice, farsighted wisdom, and fairness with this greatest nation in the world you represent, where on earth are we to look for them?

And now, since we are not in Athens, and since there is no Prytaneion here, I simply ask Your Honors for the acquittal of Dr. Stuckart.

J. Rebuttal Statement of the Prosecution to Closing Statements of the Defense*

JUDGE MAGUIRE, presiding: The prosecution will be permitted, and not allowed to exceed, 1 hour for any reply arguments, and which must be strictly limited to reply in this case. You may proceed, Mr. Hardy.

MR. HARDY: Thank you.

Before my associates deliver the rebuttal statement of the prosecution with respect to certain legal issues, I desire to state for the record the history of making documentation available to the defense in answer to the unfounded, unfair, and false statements made by defense counsel for Berger, Lammers, and Dietrich in their closing arguments.

During the course of trial the defense made several motions to gain access to the files of the prosecution for purposes of inspection and study. Needless to say, the prosecution opposed said motions inasmuch as the documentation files of the prosecution contained material to be used for purposes of cross-examination as well as rebuttal. The prosecution did offer to make available all documents in its possession which were not to be held out for cross-examination and rebuttal. Regardless, the Tribunal in each instance sustained the motions of the defense and directed the prosecution to make available all photostats and other copies of documents or records for inspection and study by defendants' counsel. In accordance therewith, the prosecution calls the court's attention to the following facts:

Since April 1948, Dr. Claus Mathe, associate defense counsel, and his assistant as well as other defense counsel, have screened better than 20,000 documents in our document division bearing letter designations NG, NO, NI, NID, PS, L, RF, etc. Defense

* Recorded in mimeographed transcript, 18 November 1948, pages 28009–28028.

counsel were permitted after said screening to check out such documents as they desired for further study for periods in excess of 1 week. Accordingly, they borrowed approximately 1,200 documents. Defense counsel requested and received 550 photostatic copies of these documents for permanent custody which required approximately 2,000 pages of photostating. This material does not include the photostatic copies of documents which were offered in evidence by the prosecution.

In no instance did the prosecution refuse a request to make available documentation in its possession. We are in a position to produce a vast amount of receipts of material signed for by the defense counsel or their representatives.

To recapitulate the history of making the documentation available, the prosecution has put at the disposal of defense counsel, upon its own initiative and by order of the Tribunal, all documents in its possession including the documentation bearing the letter designations NG, NI, NID, NO, RF, PS, L, TC, D, C, etc. It is worth noting that the prosecution fulfilled its obligation under the orders of the Tribunal, and in addition has voluntarily made available material to the defense on numerous occasions and has invited specific requests for any additional material which the defense desired.

Additionally, the prosecution offered to defense counsel, upon its own initiative and without order, such files of the Golddiskontbank, the WVHA, the Reich Bank, and the Aufsichtsrat of the Golddiskontbank which have been in its possession and many defendants themselves spent months in rooms of the prosecution studying them. In addition the prosecution offered, in its memorandum of 16 April 1948, to make available further voluminous materials to all defense counsel, consisting of a large mass of files containing captured documents primarily of interest in connection with economic charges of the indictment and including the following material: Dresdner Bank, RVK, Hermann Goering Works, Central Planning Board, and Four Year Plan files. The prosecution made available to the defendant Dietrich, without order, all the press directives from 1933 to 1945, and all the periodical directives in its possession. This material approximated 11,000 pages. In short, the documentary files of the prosecution were made the files of the defense.

Relative to documentation located in various document centers in Berlin, beyond the control of the prosecution, the Tribunal issued various orders granting permission for defense counsel to send representatives to the Berlin Document Centers for purposes of research. Defense counsel for Lammers requested permission to examine documents of the Reich Chancellery insofar as they

may be found in the Berlin Document Center. Said request was approved by the Tribunal. The Foreign Office defendants made a request for a representative to work in the Berlin Document Center and to work on official government files in London. The Tribunal, accordingly, approved of the employment of Dr. von Schmieden for this purpose. Dr. von Schmieden worked for several months in Berlin and spent 7 weeks in London. Schellenberg's counsel was permitted to leave Germany by special order of this Tribunal for purposes of gathering evidence in Sweden and Switzerland. Without exception, this Tribunal approved every reasonable request made by defense counsel of this nature. The failure of defense counsel to make specific requests to the Tribunal for additional material is significant. Can they now be justified in taking the position indicated by the defense counsel for Berger, Dietrich, and Lammers during the course of these closing arguments?

That concludes my comments on documentation, Your Honor. Mr. Amchan will continue the rebuttal statement for the prosecution.

JUDGE MAGUIRE, presiding: Mr. Amchan?

MR. AMCHAN: If Your Honors please—

JUDGE MAGUIRE, presiding: May I inquire, Mr. Amchan, whether your remarks have been reduced to writing?

MR. AMCHAN: Yes, they have.

JUDGE MAGUIRE, presiding: I noticed you were reading.

MR. AMCHAN: There will be some interpolations, if Your Honor please.

For more than 6 days defense counsel have been engaged in delivering closing arguments to the Tribunal. Undoubtedly the prosecution does not stand alone in feeling that there has been much able argument offered by counsel for the defense. But after studying the closing arguments of the defense, we find no reason to modify or to supplement in any substantial way the arguments we made in our closing statement of 9 November. With your permission we will reply briefly to a few matters raised by the defense in the last week. Our total time for closing, rebuttal included, will amount to approximately the full day originally allowed us for final argument. We will give some attention to some of the most fundamental legal arguments of the defense and some emphasis, by several examples, to what we believe to be distortions, probably arising as a result of understandable zeal on the part of defense counsel. We suggest that most of the analogies drawn by defense counsel do not pay sufficient attention to such important elements as the full facts, the context of a sentence, the context in which events transpired, the dates, the times,

the places, and the order of events. The defense in its closing arguments have made an all-out attack on the basic moral and legal principles which underlie the charges in this indictment.

Counsel for the defendant Koerner spearheaded this attack.* His point of attack is that conditions have changed since the IMT rendered its judgment in the fall of 1946. Therefore, Dr. Koch concludes on page 3 of the Koerner closing—

> "This honorable Tribunal will have to deal with the new law which has meanwhile come into being."

And again at page 6, this same counsel states:

> "The happenings of the last year adequately illustrate the extent and speed with which the world is changing, and it is the natural duty of the Tribunal to adjust itself to these changes and to verify the true contents of international law at the time judgment is passed."

Now, what are the true contents of international law to which the defendants ask this Tribunal to conform? As to the crimes against peace, the defense says, and I am quoting from Koerner's closing, page 14:

> "We have no alternative but to affirm the legal status prevailing today, that aggressive wars are not criminal, or at least that they no longer are."

As to spoliation charges of war crimes and crimes against humanity, the defense remind us that this is the first time, since the IMT—and I am quoting Koerner's counsel again at page 24—"the total economic process of the utilization of territories occupied by Germany is to be judged." They point out that the other cases at Nuernberg were individual cases of private industrialists who had private interests, whereas here we deal with the high government officials engaged in what they term "the total economic process" of the utilization by Germany of occupied territory. We agree with the defense that this case affords a distinction between government officials and private industrialists, but we see no comfort in this distinction for these defendants.

What is the new international law which they ask this Tribunal to pronounce on the law of belligerent occupancy? The defense argues that modern total war has made the prohibitions of the Hague Rules obsolete and that under the "new" international law "any considerations for the individual, the noncombatant, as well as the combatant, recede into the background."

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* Reference is made to the closing statement for the defendant Koerner, reproduced in section XIII E. The page references following are to the mimeographed copy of the translation of the closing statement which was distributed just prior to its delivery in open Court.

As to the "new" international law on slave labor, the defense says:

> "This Tribunal would make an important contribution to the future development of international law, if it were to repudiate, on legal grounds, any conviction on the charge of forced labor. There is a great difference between regarding forced labor as abominable on humanitarian grounds and being permitted to punish it on legal grounds."

This "new" international law urged by the defense runs in opposite directions at the same time. This is well illustrated by their arguments on the law with respect to aggressive war as compared with the law limiting conduct during a belligerent occupation. With respect to aggressive war, the defense argues that the outlawry of war as an instrument of national policy came too late to offer a basis for the punishment of aggressors. Here the contention is made that international law with respect to crimes against the peace crystallized and took form too late to establish standards by which these defendants may be judged. However, when we come to the charges involving spoliation and slave labor, we find the defense makes an about face. Here they claim that international law, as codified in the Geneva and Hague Conventions, is too old and that the crystallization of the principles of the conventions is completely unfitting for the modern world. Hence, they say that these conventions are out of date as a guide in determining whether these defendants committed crimes. Of course, the defense is again merely saying that there is no enforceable international law, and that anarchy alone prevails when nations come into conflict.

Crimes Against Peace

During the last week we have heard the defense argue that in spite of the London Charter, Control Council Law No. 10, the IMT judgment, and other Nuernberg decisions, aggressive war is not really a crime at all. This Tribunal, in effect, is asked to accept this challenge to its jurisdiction and to declare that the most basic part of the law establishing the jurisdiction of this Tribunal should be declared null and void. Such argument is not new to this Tribunal. Motions and extensive memoranda were filed by the defense during the course of the trial, attacking the jurisdiction of the Tribunal. Needless to say, after due consideration, the defense motions were denied in each instance. The defense gave a somewhat strange twist to an old argument by another assertion. They claim that even if aggressive war were cognizable as a crime in 1945 when the London Agreement was

signed, it is no longer a crime because of developments in the relations between nations since 1945. Of course, these and related arguments have been made to other Tribunals in Nuernberg with no effect. Less than a month ago Tribunal V in its judgment in Case 12* reaffirmed that aggressive war was the supreme crime in international law. However, last week counsel for the defendant Koerner said:

> "Who is still going to maintain today that aggressive warfare is prohibited? * * * Even had aggressive warfare been banned at the time the IMT judgment was passed, this is certainly not the case today by virtue of the general usage practiced by the community of nations. * * * since the IMT judgment was passed, nowhere throughout the wide world has the attempt been made to prosecute any person guilty of one of the crimes established as liable for punishment by the Charter and Control Council Law No. 10. * * * The IMT, which described (Goering) as the driving force behind wars of aggression, is completely mistaken. If there was anyone who was against all wars, and again and again worked for peace, it appears to have been Goering. * * * Propinquity to Goering does not argue in favor of readiness for war but readiness for peace."

No doubt there will be further efforts by some to make Goering appear to be the true prince of peace. As Dr. Koch was making these statements before this Tribunal last week, the International Military Tribunal for the Far East, composed of judges from many nations, was pronouncing judgment that certain indicted Japanese leaders were guilty of crimes against peace as well as guilty of a conspiracy to commit crimes against peace.

The defense, however, reminds us of the political situation existing in the world today, and in cavalier fashion they parade before our eyes some of the problems which are now before the United Nations. The defense asserts that the fact of the existence of political disputes and civil war is proof that today aggressive war is permissible. This is curious reasoning, indeed. The existence of strife and civil war in certain areas of the international community is proof, the defense argues, that there is no law in the international community, notwithstanding the fact that efforts are being made to resolve the political disputes by means other than the resort to arms. This Tribunal is hardly in a position to consider the legal aspects of these political disputes. But even if these dispute may involve violations of international

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* Reference is made to the judgment in the High Command case, United States *vs.* Wilhelm von Leeb, et al., Volumes X and XI, this series.

law, the point of the defense is not well taken. To be consistent the defense would have to maintain that there is no municipal criminal law, for they could just as well point to the calendar before any criminal court in any country to show that the law is being violated every day in the domestic field. We hardly believe the defense would make that analogy or that they would be so rash as to argue that because all the violators of domestic criminal standards have not been brought to justice, that this indicates the absence of standards to which the individual is bound to adhere.

We suggest that the principles relating to individual responsibility for crimes against peace, principles painfully evolved through past decades, do not lose their validity because today questions of infringement of the peace are being presented in world councils. On the contrary, every reason is thereby given for a resounding affirmation of the basic rule that aggressive war may not be used as an instrument of national policy without individual criminal responsibility.

What the defense contends is that a state today has the right, without any restrictions at all, to be the sole judge of when to launch a war of aggression. To test the application of the defense contention in the light of the facts developed here in Nuernberg the defense are inviting a situation where the high officials of any government might say with impunity:

> "We shall engulf State A; there is of course no question of sparing State B; since we shall establish a principle of national and racial supremacy, we must for that purpose take over States C, D, or E, and resettle or exterminate the inhabitants of those states for the purification of our 'master' race. These are our war aims and as a matter of military necessity we will deport the civilian population of countries we occupy to work for us as our slaves, and we will use the economy of the countries we occupy for our military economy."

This legal argument of the defense is not surprising, for it is the only way these defendants can hope to exculpate themselves from responsibility. Such legal theories could lead us to overlook the facts. The experience of the last war, how it was planned, prepared, initiated, and waged, cannot be so lightly brushed aside.

In our brief entitled "Legal Principles Applicable to Crimes against Peace," we have called attention to the analysis by Professor Goodhart in the International Law Quarterly, a British publication (Winter, 1947, p. 545). Professor Goodhart said—

> "We must not forget that belief that certain acts are criminal has always had a compelling influence on the actions of

people because there is an inherent tendency to be law abiding. The enforcement of law follows on the recognition of law. By driving home the lesson that aggressive war is a crime, the Nuernberg trials have made it less easy for a fanatic to lead his people into such an adventure."

We conclude this part of the discussion by referring to the analysis of Professor Jessup, now the deputy delegate of the United States to the United Nations. In writing on the subject, "The Crime of Aggression and the Future of International Law," this learned authority states (Political Science Quarterly, vol. 62, No. 1, p. 4):

> "Inaction by the whole society of nations from now on would constitute a repudiation of the precedent with the consequence that the last state of the world would be worse than the first. It would constitute an assertion that aggressive war is not a crime and that the individual who was guilty of endangering the international public repose is not to be treated as criminal."

Mr. Sprecher will continue for the prosecution.

JUDGE MAGUIRE, presiding: Mr. Sprecher?

Limitations on Belligerent Occupation

MR. SPRECHER: The closing statements on behalf of the defendants Koerner, Pleiger, and Kehrl* offer a proper sampling of extended arguments of the defense on the law concerning the charges of spoliation and slave labor. These arguments run to the effect that because of the very nature of modern war the historic limitations of belligerency are void; all considerations of humanity fade out of the picture when the belligerent invokes the magic words "military necessity"; there are no limits upon the requirements of military necessity, except those which the belligerent may choose to impose upon himself; everything is permissible in dealing with the economy or the manpower of the occupied country which has any relation to the military economy of the occupant; briefly, the territory occupied during war and the human beings who live in occupied territory become an integral part of the economic sphere of the occupant with which he may do as he chooses; the title of the owners of property may be divested at will by the belligerent and its value later debited to "the loser" of the war when the treaty is drawn; war is the most ruthless of all human business and it is absurd for society to attempt to enforce any limitations upon its conduct.

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* The closing statement for the defendant Koerner is reproduced in section XIII E. Extracts from the closing statement for the defendant Pleiger are reproduced in section XIII F. The closing statement for the defendant Kehrl is recorded in the mimeographed transcript, 15 November 1948, pages 27654–27715.

To this kind of argumentation we can provide no better reply than has been made by the Krupp Tribunal (*Tr. p. 13259*)—*

> "* * * the contention that the rules and customs of warfare can be violated if either party is hard pressed in war must be rejected on other grounds. War is by definition a risky and hazardous business. * * * It is an essence of war that one or the other side must lose, and the experienced generals and statesmen knew this when they drafted the rules and customs of land warfare. In short, these rules and customs of warfare are designed specifically for all phases of war. They comprise the law for such emergency. To claim that they can be wantonly—and at the sole discretion of any one belligerent—disregarded when he considers his own situation to be critical, means nothing more or less than to abrogate the laws and customs of war entirely."

We hear the further argument that the Allies during the postwar occupation have adopted the principles and the methods of Nazi Germany, in one respect or the other, and therefore no tribunal consisting of members of one or more of the Allied Powers can properly declare that individual Germans are guilty of violations of international law. Similarly, it is argued that the Allies have cast asunder the principles of the Hague and Geneva Conventions by their conduct after Germany's defeat. Here again the process of apology and rationalization goes all the way to *reductio ad absurdum*.

On the basis of these arguments, the defense declares that neither this nor any other tribunal can properly draw distinctions with respect to the permissible conduct of a belligerent occupant. This argument has been repeated again and again, in other cases quite as well as this one, and from the decision of the IMT onward, no Tribunal has given any support to such assertions. We consider it fair to suggest that at least some of this constantly repeated argument is not calculated to persuade you of the ultimate conclusions at which the defense arrives. That objective has failed too often. Certainly one element of some of the defense argument is to make Your Honors believe that the field of belligerent occupation is one in which there is neither chart nor compass; that since the field has offered some complications to the learned jurist, the judicial function cannot appropriately function; that the law abdicates to become no law where there are some refinements of criminal conduct susceptible of debate; and that even if a defendant is guilty of a crime, he should be dealt with lightly since at least the Germans did not take inter-

* United States *vs.* Alfried Krupp, et al., Case 10, volume IX, this series.

national law as seriously as it turned out to be. In this rebuttal argument we shall treat these matters briefly. For a more extended treatment, we refer Your Honors to our brief filed on 4 November 1948, entitled "Prosecution Brief on the General Principles of Law Applicable to Count Six (Plunder and Spoliation)," and to the decisions of other Nuernberg Tribunals. For present purposes our argument can be divided roughly into four major points—

1. *Belligerency with contesting armies in the field.*—The Hague-Geneva Conventions were adopted to confine and limit the horrors of war. It is strange that the defense keep trying to make something else out of the Hague and Geneva Conventions. For example, the Hague Convention No. IV of 18 October 1907 states in its preamble that while the parties seek "means to preserve peace and prevent armed conflict between nations, it is likewise necessary to bear in mind the case where the appeal to arms has been brought * * *." The very title of the convention makes our point clear—"Convention Respecting the Laws and Customs of War on Land." The convention seeks to govern the conduct of belligerents when there are still armies in the field. This basic principle is re-emphasized by the IMT[1] at page 254 of the official English text under a heading entitled—"The Law Relating to War Crimes and Crimes Against Humanity."

2. *The law concerning occupation if there are no longer contesting armies in the field.*—The IMT stated on page 218 of the official English text:[2] "the countries to which the German Reich unconditionally surrendered" have the "undoubted right * * * to legislate for the occupied territories * * *." This condition admits of no such restrictions as the restrictions imposed upon an occupying power during a state of belligerency. Similarly, Tribunal III in Case 3 (the Justice Case), after citing numerous authorities on this question, declared at page 10,620 of the transcript,[3] "The Four Powers are not now in belligerent occupation or subject to the limitations set forth in the rules of land warfare." The law may some day provide that other powers than the principal victors may control the nature of a postwar occupation or that an appropriate international body of many nations control the nature of a postwar occupation. Indeed, today, numerous matters directly relating to Germany are the subject of both debate and action by various bodies of the United Nations Organization.

In any event, the defense claims that the limitations upon belligerent occupation are likewise applicable to postwar occu-

[1] Trial of the Major War Criminals, op. cit. supra, volume I, pages 253–255.
[2] Ibid., p. 218.
[3] United States *vs.* Josef Altstoetter, et al., Case 3, Volume III, this series.

pation, are based upon a failure to regard the basic differences between the two types of occupation. It has been traditional for an occupying power after a complete and final subjugation of its enemies to seek reparations for the injuries suffered during belligerency. The history following the Franco-Prussian war and the First World War is in point. Of course, in the Second World War the injuries to the occupied countries at the hands of the German and Japanese aggressors were immeasurably greater in both scope and degree than the sufferings inflicted on occupied countries and the citizens of occupied countries in other recent wars. Any preventive or retributive measures taken by the Allies on the day of reckoning with the Axis aggressors are not to be confused as a matter of law with the illegal measures of occupation which Germany applied and enforced while her victims still fought back to restore their lands from occupation by the invader. Whether the measures of reparation the Allies have taken turn out to be wise or unwise, these steps certainly have not been a blow to the conscience of the civilized world. And if reparations were increased a hundredfold, they would still be but scant reparation for the damage inflicted. Moreover, many, if not most, of the acts of Allied occupation to which defense counsel point are a part of a program which was calculated to prevent the military revival of the principal aggressor, Germany. The world has learned from hard lessons much about the potentialities of this nation which has launched a number of wars against its neighbors in the last century.

It would be particularly unfortunate if aggressors were led to believe that international law prevented the exercise of legislative power over a defeated aggressor nation. This would be to destroy another factor restraining aggressors. Another great difference between the two kinds of occupation, whether we are considering the use of property or the treatment of labor, is the fact that the use of property and manpower in a postwar occupation does not make the citizens of the occupied country feel like they are traitors. The reason is that citizens affected know that their country is no longer at war. There is a significant difference between the case where German prisoners of war still work in France to repair the devastation which Germany wrought during the recent war, and the case where Germany deported Frenchmen during the war. In the latter case, the French deported laborer knew and felt that the armament work he furthered for Germany was a contribution to Germany's total war economy, and hence directed against the forces attempting to restore the independence of France.

3. *"Military necessity" and changes in the practices and usages of warfare.*—It is indeed true that international law with respect to the usages and practices in the conduct of war did not become fixed and final in every respect and for all time after the Hague and Geneva Conventions were adopted. Particularly with respect to the development and use of more deadly weapons in inflicting damage upon the enemy, there have been changes. It is probably beside the point to mention which of the more horrible weapons of modern warfare were first employed by nations of the Axis and which by nations of the Allies. But since the defense has raised the point, we need only recall the order in which events took place—the use of the submarine, the use of the dive bomber against civilians in Poland, the unrestricted bombing of Warsaw and Rotterdam, the London blitz—all of these events took place before the Allies replied in kind and ultimately in full measure. But, in any event, it is principally to the destruction of life and property in modern aerial warfare to which the defense counsel point in asserting that German leaders should not now be held responsible for what they did in calm deliberation to the property and to the people of the countries which Germany occupied. On this subject Dr. Lauterpacht has written an article in the British Year Book of International Law, 1945, entitled "The Law of Nations and the Punishment of War Crimes." The following quotation is taken from that article. The quotation was incorporated in the judgment of Tribunal VI* in its discussion of the law of spoliation [*Tr. pp. 15710–17530; at page 15725*]—

> " 'Moreover, it does not appear that the difficulties arising out of any uncertainty as to the existing law have a direct bearing upon violations of the rules of war which have provided the impetus for the almost universal insistence on the punishment of war crimes. Acts with regard to which prosecution of individuals for war crimes may appear improper owing to the disputed nature of the rules in question arise largely in connection with military, navy, and air operations proper. No such reasonable degree of uncertainty exists as a rule in the matter of misdeeds committed in the course of military occupation of enemy territory. Here the unchallenged authority of a ruthless invader offers opportunities for crimes, the heinousness of which is not attentuated by any possible appeal to military necessity, to the uncertainty of the law, or to the operation of reprisals.' "

We think that these defendants can find little succor from the authorities or from the decisions of other Tribunals to sustain

* United States *vs.* Carl Krauch, et al., Case 6, I. G. Farben case, Volumes VII and VIII, this series.

their conclusion that the conduct we charge as criminal is permissible and legal because in modern warfare high explosives and aerial bombardment have been employed against the civilian population and the industrial cities of the enemy.

Counsel for the defendant Kehrl, in document books 1–A and B, had presented documentary excerpts to show that traditional American occupational practices demonstrate the same disregard for law as Nazi practices. We have examined the texts to which defense counsel have made reference and we have found that the defense arguments are simply gross distortions of the statements of the text. To illustrate, counsel for Koerner has quoted one of the documents as establishing the principle that military necessity overrides all human considerations in occupied areas. In fact, the text observes that military necessity is subject to the considerations of humanity.

Furthermore, we suggest that when the Tribunal examines these documents on American practices as some evidence of the international laws of war, it is necessary to distinguish between belligerent occupation and postwar occupation, to distinguish between manuals for "Military Government" and manuals on the Hague Regulations (FM 27–10), and to distinguish between the limited meaning of the term "military necessity" in American usage and the all-embracing content which German counsel put into the same words, in accordance with German practices.

Now Judge Maguire asked some questions with respect to the provisions of various American directives or manuals concerning the rules of belligerent occupancy. We may state generally that a careful inspection will reveal that the American Army regulations set down in FM 27–10 are in substantial agreement with the analysis of the rules and customs of international law as we have previously analyzed them, and as we believe they have been applied, for example, by the International Military Tribunal. We refer the Tribunal to pages 73 to 86 of FM 27–10,* Article 271–344. In any case this Tribunal is bound to apply an international statute, Control Council Law No. 10, and the terms of the statute must be construed with reference to the customs and practices of general international law.

Now in the Hostage Case, the defense properly pointed out that the American and British manuals, at least at the beginning of the war—that is, the manuals on land warfare—stated that a soldier had to obey an order even if it was illegal. Now, in that case in the judgment Tribunal V met that point and that argument head-on. You will find the decisive part in the transcript at pages 10429 and 10430.

* FM 27–10, Rules of Land Warfare (United States Government Printing Office, Washington, 1940).

JUDGE MAGUIRE, presiding: Case 5?

MR. SPRECHER: Yes sir, the Hostage Case, Case 7, Tribunal V—Hostage Case. Case 7, Tribunal V.

I would like to quote several lines from that judgment on this point*—

> "We point out that army regulations are not a competent source of international law. They are neither legislative nor judicial pronouncements. They are not competent for any purpose in determining whether a fundamental principle of justice has been accepted by civilized nations generally. It is possible, however, that such regulations, as they bear upon a question of custom and practice in the conduct of war, might have evidentiary value, particularly if the applicable portions had been put into general practice. It will be observed that the determination whether a custom or practice exists is a question of fact. Whether a fundamental principle of justice has been accepted is a question of judicial or legislative declaration. In determining the former, military regulations may play an important role, but in the latter, they do not constitute an authoritative precedent."

Now in that case the British and American manuals were found to have announced a principle in their directives to their own soldiers which was not consonant with common international law or usage, and the Tribunal proceeded to a decision on that basis.

4. *The "tu quoque" doctrine.*—The defense has gone to great pains to allege cases where some representative or some agency of one or the other of the Allied Powers allegedly stepped beyond the prescribed limits of belligerent occupation before the unconditional surrender. But even these assertions are isolated instances. They fall very short of showing a pattern of general conduct which would indicate that international law has been altered by custom and usage with respect to the conduct we charge as criminal. Unless it can be shown that the law has changed, it is of course no defense to say that someone else has also erred and committed evil. The doctrine of "you too" (*tu quoque*) stands out sharply in the law for good reason. If every criminal could avoid his accounting with society merely by saying that another is guilty, we would soon return to the law of the jungle, and we suggest that this argument of the defense is but another example of their effort to state that there is no law whatsoever. Moreover, it is one thing to refer to a local instance and to an isolated case. It is another thing where the conduct charged as original

* United States *vs.* Wilhelm List, et al., Case 7, Volume XI, this series.

was a part of a systematic program of persecution and systematic exploitation with no or little regard for the most elementary concepts of decency.

The Rule of Law

Society finds its way toward the extension of the rule of law in the domestic field as well as in the field of international law by traveling a troubled road. The legal machinery for bringing evildoers to account is normally some little way behind the acceptance by an overwhelming majority of higher standards of decency and human conduct by which the law grows. But to say that all evildoers are not brought to bar is not to say that there are no moral principles or that there is and should be no law. This is familiar ground. The defense asserts that we seek to apply two kinds of international law, one which is applicable to certain categories of Germans, and one which is applicable to the citizens of the balance of the community of nations. This is false. International law is international law, whether Germany, America, the Soviet Union, or any other country is involved. This does not mean the legal machinery is either universal or perfect. But strides are being made toward the perfection and extension of the judicial process in international law. It is quite true that it was the emphatic reaction of the civilized community of nations to the incomparably shocking travesties of the Second World War which led to the establishment of legal mechanisms to enforce international law as against major Axis offenders, and that these offenders principally have been citizens of the three main Axis Powers: Germany, Italy, and Japan. Discussions in the various bodies of the United Nations show efforts to attain judicial as well as other machinery to perfect the working of international law. At the beginning of this month the International Court of Justice at The Hague opened a case involving a dispute between Great Britain and Albania over the sinking of British vessels after 1945. It is obvious that international law is becoming more and more extensive in its actual enforcement by the community of nations. The difficulties and the imperfections in the application of international law to concrete situations offer no basis to assert its nonexistence. Concerning the concrete situations before Your Honors, the Tribunal has clear jurisdiction, and the machinery for the enforcement of the law is at hand. In applying the law to the facts, we petition the Tribunal that justice be done and right be vindicated.

XIV. FINAL STATEMENTS OF DEFENDANTS TO THE TRIBUNAL[1]

JUDGE MAGUIRE, presiding: The Tribunal will now proceed to hear statements of such of the defendants as may desire to avail themselves of the opportunity.[2]

As a matter of convenience, the defendants will be called, starting with the defendant von Weizsaecker in the first row and continuing to the right down that row and then starting at the left of the second row. Such defendants as may desire to make statements will arise from their seat in their proper time, come to the podium, and address the Tribunal. The first defendant to be heard is the defendant von Weizsaecker if he so desires.

You may proceed.

DEFENDANT VON WEIZSAECKER: I have only a few words, Your Honors, in conclusion. I pursued two professions, both of which were characterized by silence. As far as I myself am concerned, I would have preferred to remain silent here too; but I was not representing myself only here. What does the sailor do when bad weather and the captain endangers his boat? Does he go below in order not to take any part in the responsibility, or does he lend a hand with all the means and forces at his disposal?

I did not try to leave the zone of danger. I held out, and I struggled there. That was my decision. My objective was peace, peace for my own native country, and peace for the world I was in. I followed this objective successfully at first and afterward without success. It was inevitable that I would incur the danger of being misunderstood by both sides. Achievement and being understood by others are not the ultimate criteria of action. Today, if I were faced with the same decision, I would have to make it along the same lines. There is only one limit set, and beyond that limit not even good will may justify the deed. That limit is set where intervention consciously sacrifices human life. I know for myself that I did not trespass on that limit. Of course there will always be something which one would have liked to have done differently, and perhaps better. One can never quite stand up to the examination of one's own conscience. It would be presumptious to attempt to justify one's self before the last Supreme Judge of all.

And now one last, final word of thanks. First of all my personal thanks are addressed to those men, often much younger men than I, who understood me, who trusted me, and who perhaps

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[1] Recorded in mimeographed transcript, 18 November 1948, pages 28029–28084.

[2] Under Military Government Ordinance No. 7, Article XI (*h*), as amended by Military Government Ordinance No. 11, Article III, "Each defendant may make a statement to the Tribunal" before the Tribunal retires to consider its judgment.

followed the example I set for them. In saying this I am also thinking of all those people who in those confused times retained good will. The front line of good will cuts right through the visible front of politics. Peace is not in our power, but it remains the concern of men of good will. That those men may succeed where my own generation failed is my wish for the future.

JUDGE MAGUIRE, presiding: Does the defendant Steengracht von Moyland desire to address the Tribunal? If so, you will take the podium.

DEFENDANT STEENGRACHT VON MOYLAND: May it please Your Honors. I do not want to go into the details of my case once more, but may I make a few personal remarks. We have heard a lot about judicial deductions these last days, and even today a few remarks of a more general nature, but may I ask also in my own case that it be taken into consideration how the situation really was in former times. When I was ordered to take over my office in 1943 everything was topsy-turvy in Germany. I had neither the possibility nor the power to change anything. All decisions were already taken, and these decisions were strictly enforced in life and politics. There was no law on which I could base myself. There was no legal foundation. The only law I could follow was the law of my own conscience. This law I tried to follow, and in doing so I had to act time and again against orders, because my only wish was to promote better conditions for people who were in need. The best reward I had for that was the fact that I was sometimes successful. Unfortunately, the contrary was often the case.

When I was interrogated here for the second time by Professor Kempner, I said to him, "You may shoot me on the spot if I ever said even one single word against a Jew, or the Jews in general." I wanted to say by that, that if I had done something which was not right, then I would not defend myself.

The statements which I made 3 years ago during my interrogation, I have never altered. I had no need to alter them because what I did was the only law which I could follow, the law of my own conscience; and I have kept myself guiltless in this respect, because all I ever endeavored to do was to do nobody harm, but only to help.

I was a judge myself, and I know that every single case will be considered by Your Honors and will get the consideration it merits.

I thank Your Honors, and I believe in justice.

JUDGE MAGUIRE, presiding: Does the defendant Bohle have any remarks?

DR. GOMBEL (counsel for the defendant Bohle): He has waived his remarks.

JUDGE MAGUIRE, presiding: Very well. Does the defendant Woermann wish to be heard?

DEFENDANT WOERMANN: No.

JUDGE MAGUIRE, presiding: The defendant Keppler, I understand, has waived his right to make remarks, as stated by Dr. Schubert. Is Dr. Schubert here?

DR. EISOLD (associate counsel for the defendant Keppler): May it please Your Honors. The defendant Keppler has waived his right of making a final statement.

JUDGE MAGUIRE, presiding: Does the defendant Ritter desire to make a final statement?

DEFENDANT RITTER: Your Honor, I have nothing to add to the final plea which my counsel made for me.

JUDGE MAGUIRE, presiding: The defendant von Erdmannsdorff?

DEFENDANT VON ERDMANNSDORFF: I likewise have nothing to add to the statements contained in the final plea.

JUDGE MAGUIRE, presiding: The defendant Veesenmayer?

DEFENDANT VEESENMAYER: May it please Your Honors. During the last 3 years, while I was held a prisoner, I was never asked why in May of 1945 I voluntarily placed myself in the hands of the American Army. Today I should like to answer that question. I did not want to be faithless to myself. I believed in the fairness of the victors, and I considered it to be lacking in courage and unworthy to evade responsibility when the greatest catastrophe had befallen my native country.

Your Honors, I had great faith in the idea and in the leadership which upheld that idea. I am speaking of that same leadership which demanded of the German people, and therefore also of me, obedience, allegiance, willingness to sacrifice, and service to the community and to the fatherland.

I am not a lawyer, Your Honors, nor am I an official. Both of these fields are alien to my nature. I believe myself to be a political soldier, and in that capacity in time of war I believe it my duty to serve under the laws of war, which are more rigorous than ordinary laws. To escape by emigration was out of consideration altogether as far as I was concerned. I thought, and still think today, that for me is the fulfillment of a duty, that my standing trial here is a kind of mission imposed upon me in the organic continuation of what I formerly did. It wasn't always an easy task for me to do this, and sometimes it seemed to be unbearably hard, particularly when men, who were otherwise men of courage, appeared here in Court as witnesses, testifying against me in the service of falsehood instead of truth, whereby they became unfaithful to their own selves. Men like Horthy and Winkelmann are not men that I am inclined to despise, but much

rather I profoundly pity them. How different does the word of an American defense counsel sound who said in the Skorzeny trial:* "There is no American mother who would have been ashamed to have borne these men as sons." In saying this, I am thinking of my own mother, and I am sure that were she alive today she too would have no reason to be ashamed of me.

The prosecution in its trial brief, directed against me generally, and Professor Kempner earlier, on the occasion of my cross-examination, characterized me as a man of politics. In doing so—perhaps involuntarily on their part, because they served a specific objective—they did not spare words of high recognition. I won't deny, and cannot deny, that there is a political strain in me. And it is this same political strain which caused me in the past, as it still causes me today, to ignore my own ego; to ignore the hour, and the day, and the specific circumstances; and to survey the far distance. Certainly during my imprisonment, of necessity I reviewed things in retrospect and with inward contemplation, and in doing that I did not fail to recognize my own errors. However, I believe that these errors emanated from a very profound belief on my part. They may have been faults, it is true, but still I will never believe that they are to be classified as criminal. It is so easy a thing in retrospect, knowing what we know today, to discuss and evaluate what lies in the past; but let us look at the present, and let us try to evaluate the future—the very near future. If we do that we will find how incredibly hard it is to evaluate justly the practical realities of life today. Knowing the countries and the nations of the southeast of Europe, I also know what strength and what fanaticism is embedded, not only in the idea of Pan-Slavism, but also in the idea of world-wide Bolshevist internationalism. History teaches us that ideas have always been decisive for future events, and stronger than technique. That is why I would like to say here that it is my hope that it may be recognized that Germany and the fate of Germany is an integral part of the fate of your country too, Your Honors.

Your Honors, now when you proceed to find judgment and after that return to your own country, I would like to sum up my wishes in one sentence, which comes sincerely from the heart, a sentence which here in this courtroom we have heard so often—"God save the United States of America and this honorable Tribunal."

JUDGE MAGUIRE, presiding: I take it that the defendant Stuckart, or that his counsel waives a statement by him.

DR. VON ZWEHL (counsel for the defendant Stuckart): Stuckart waives a final statement, Your Honor.

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* United States *vs.* Otto Skorzeny, et al., tried before a General Military Government Court at Dachau, Germany, 18 August–9 September 1947.

JUDGE MAGUIRE, presiding: Does the defendant Lammers desire to make a statement?

DEFENDANT LAMMERS: No, Your Honors. Thank you.

JUDGE MAGUIRE, presiding: Does the defendant Schellenberg waive a statement?

DR. JAEGER (associate counsel for the defendant Schellenberg): Your Honors. The defendant Schellenberg personally waives his right to make a final statement and has authorized his defense counsel to say in his behalf that he fully agrees with the statements contained in his counsel's final plea.

JUDGE MAGUIRE, presiding: Very well. Does the defendant Darré desire to make a statement?

DEFENDANT DARRÉ: May it please Your Honors. My career and my studies led me to recognize that peasantry is the biological root of our European culture. The inference which I drew from this was that the fundamental pillars of this European culture are jeopardized to the extent that its peasantry comes to be jeopardized. In my publications, and particularly in my two books, I expressed this thought; and I tried to arouse public opinion.

The world crisis after World War I shattered European agriculture, and above all German agriculture, to its very foundations; agriculture foundered in unparalleled debts and impoverishments. There arose in Germany peasant revolts which were extreme and even nihilistic in nature. The German Government was helpless in the face of this situation. Methods were discussed which might alleviate the situation, but no help was found for German agriculture.

At that time, in May of 1930, Adolf Hitler approached me and asked me to become his associate. I was not a National Socialist then, nor up to that time had I ever met Hitler or any of his associates, nor was I a member of any political party. Hitler was not the only man who had at that time approached me on matters of that type, but the offer that Hitler made me was the most attractive. Of the stipulations I made, the most essential was that I and my work were to remain independent of the Party. Neither did I desire to receive any funds from the Party. Hitler accepted these terms, and I took up my work for him. What I wanted might be summed up in the following three points:

1. I desired to counteract the economic ruin of German agriculture in order to save the economic foundations of the peasantry. These are the considerations that later on gave birth to the marketing regulations. At no place in the National Socialist programs prior to 1933 will you be able to find a single word concerning the marketing regulations.

2. I desired to cut off the extreme and radical movements within

agriculture; and I desired to develop a vocational self-administrative body, for it was my conviction that in this vocational self-administration lay the only basis for real state construction. These considerations led to the Reich Food Estate and brought it into being. The Reich Food Estate, too, was created only after 1933, arising from the conditions which prevailed at that time; and it was in conformity with the desire then entertained by agriculture to be at last represented in a uniform way with industry and trade.

3. Last of all I desired to consolidate and maintain the peasantry in their existence. I desired to revive and develop peasant culture and thus bring in a revival of peasantry. These deliberations led to the birth of the Hereditary Farm Law and a number of other measures. The Hereditary Farm is an ancient concept in Germany, many centuries old, and it has nothing to do with national socialism.

I expressed the above three basic thoughts of mine in my two books, "Peasantry as the Source of Life of the Nordic Race" and "New Nobility Arising from Blood and Soil." Both of them were written before I made Hitler's acquaintance. In these books I emphasized the ideas of rural self-administration, and I demanded that, as far as this self-administration was concerned, the State was to exercise only one right, that of supervision, but no other. When I was made a [Reich] Minister I acted along these lines; and, on the basis of this attitude and conduct of mine, I not only rejected the tendency of the Party, which gradually developed in favor of a totalitarian regime, but contested it so definitely and so clearly that in the end I was thrown out of office.

The road that I trod in the Third Reich was described to Your Honors by my defense counsel, in the final plea. First of all, I was considered an idealist, and then a romanticist, and then a rebel, and then a defeatist, but last of all a fool. You cannot help peasantry by waging war; you cannot further it by waging war either. Not only did I claim respect for the peasants of our own country, but I claimed it as well for the peasantry of other nations too. I stated this definitely and clearly as early as the first Reich farmers rally which took place in January 1934, in Weimar, in the city of Schiller and Goethe. This principle was the standard for me and my associates in international collaboration. This speech of mine was introduced into evidence here as a prosecution document.

In the five years from 1934 to 1939 we were able to achieve an international European collaboration in the sphere of agriculture, which in that form was something thoroughly novel and unique in Europe. Only a person who himself took part in the Interna-

tional Agrarian Conference in June 1939 in Dresden can have a general idea of the surprising achievements of this successful international collaboration. The leading men of the world of agriculture, particularly those of Europe, came to appreciate and to recognize my work. This work of mine collapsed with the outbreak of the war. From 1942 to 1945 I lived in exile. The rumor was circulated that I was mad, the tactics of the men then in power were clear: "This man, deprived of all power and banned, may perhaps be a potential source of danger by the words he can still speak." Mentally it is much greater torture to be persecuted and despised by one's own compatriots than it is to live in the prisons and concentration camps of the victorious enemy.

On 14 April 1945 I intentionally submitted myself to imprisonment in order to make publicly known my intentions and the solution that I offered. Under the Third Reich this right had been denied me; the man who at that time was declared to be mad was forced to remain silent unless he was willing to exchange exile for a lunatic asylum. What upheld me from the time I was really deprived of power 9 years ago, in the fall of 1939, was the certainty that my intentions would prove their worth in the judgment of posterity, and the hope that later on, at some time, my work would come to be recognized. My ideas on peasantry led, in 1930, as the result of the rapid deterioration of economy, to my first meeting with Hitler; but, in the same manner, these same theories on peasantry led me and Hitler apart again, gradually at first, but more clearly as time went on.

Today I am still convinced that the question of the peasantry is the crucial point and the vital question for the future of Europe. Humanity will continue only for so long as it recognizes the fertility of the soil as its most precious treasure and its most important work. This treasure of the soil is protected and cultivated by the peasants, therefore only that social order will continue in existence which grants the peasants their rightful position in the social order. May this recognition prevail in the moral, spiritual, material, and intellectual confusion of the present day. If that were so, Europe could become the garden of its nations, a garden in which every individual could cultivate his own individuality, and recognize and respect that of others. Only when this comes about will genuine peace prevail in Europe.

[Noon Recess]

PRESIDING JUDGE CHRISTIANSON: We will resume hearing the defendants who wish to make statement in their own behalf. Apparently the defendant Meissner is next on the list. Defendant Meissner, if you wish to be heard you may take the podium.

DEFENDANT MEISSNER: May it please Your Honors. The prosecution has advanced the thesis that the high officials, by remaining in office and by their work, first made it possible for Hitler's dictatorship to come into being, and it is on this political basis that the prosecution built up its indictment of these men.

This thesis cannot stand up to any examination, be it under factual, political, or legal aspects. The German civil servant was a professional civil servant. He was trained in century-old tradition that by loyal and efficient work, uninfluenced by the political trend of the day, he should serve the State, and not the government that happened to be in power. In the years following World War I, in which political changes, governments, and party coalitions came and went, this idea was reinforced and became common for the entire body of professional civil servants.

In conformity with this attitude, German civil servants, though preponderantly in favor of a monarch at that time, without hesitation remained in office when in November 1918 the Kaiser and the Princes of the Laender were forced to abdicate, at a time when in Germany for many months interchanging labor and soldiers' councils exercised governmental powers devoid of all legal foundation. At that time the civil servants by continuing their work kept public order and public administration working, and by remaining in office contributed a decisive share in reinstating a state of law. It was because of this concept of their duty as civil servants that they continued in office when in 1919 the new republican constitution reorganized the German Reich on a democratic parliamentary basis. That was credited to them then as a high merit by governments and by the entire German people. They acted in the same way in March 1920 when in the Reich capital and in the north of Germany during the Kapp revolt elements of the right radical wing temporarily seized governmental powers.

Consequently, the professional civil servants—and this applies equally to officials in subordinate as well as in executive positions—considered it a matter of course to remain in office when on 30 January 1933 a Reich government under Hitler took the lead—a government which it is true pursued a different political trend, but had undisputably been set up on a constitutional basis.

The civil servants were not led astray in their fundamental concept by the abuses perpetrated during the first transitional months. Under the lawless conditions prevailing during the Communist revolts and the radical right-wing revolt of the Kapp Putsch in 1918–1920, they had experienced for themselves how, by officials remaining in office, a substantial contribution was made toward gradually overcoming revolutionary transitional

phenomena and reaching a calm course of development. Particularly the officials in higher positions were of this opinion, all of whom, as proved in the trials here, remained in office without exception. In conformity with the opinion we generally held, any resignation from office would have implied making room for inefficient Party exponents, men inexperienced in public service, and would thus have obstructed a peaceful course of development.

We deemed it a duty incumbent upon the responsibility inherent in our office to remain at our posts, and to defend any factors which might serve to maintain public order and further the desired peaceful course of development.

In addition to that, it must be borne in mind that the government formed on 30 January 1933, styling itself a "Government of National Coalition," actually represented a coalition government of the right-wing parties, and it was not possible to discern any illegal, let alone criminal plans, in the Party Programs and the Fuehrer speeches made by the National Socialist Party, which was the leading political party in the government. At that time, and for a long time after, it could not be seen that one day the radical tendency in this movement, and through it in the government itself, would rise to the surface and go into action. On the contrary, we and the great majority of the German people believed that, just as in the revolutionary years of 1918 to 1920, the responsibility taken over by the government and the governmental executive powers that lay in the hands of the old and decent civil servants and the Reichswehr, after overcoming a period of transition, would assure a legal and peaceful development taking its course. As a matter of fact, the initial development in the year 1933–1934 permitted these hopes to appear justified.

After the death of Reich President von Hindenburg, and after all governmental powers had been united in the hands of Hitler, the developments leading up to the Party dictatorship started, but this took place only gradually and unnoticeably and on formal legal lines. The civil servants did their utmost to ward off abuses by the Party agencies, and by the government agencies under Party domination, as well as to resist the expansion of Party dictatorship. They severely criticized individual abuses and acts of illegality that came to their knowledge and repudiated them. Even officials in executive positions did not know and could not know, in view of the strict secrecy imposed, that Hitler was pursuing war plans and for the implementation of these plans was pursuing illegal objectives. It was only after the collapse that the major crimes and atrocities of the war actually came to their knowledge.

Therefore, it is incorrect to maintain that the leading German officials made it possible for the criminal Hitler regime to become effective and sponsored it.

Only a man totally unfamiliar with the nature of the totalitarian state and the structure of the Third Reich could maintain that the officials, and particularly the ministerial officials and departmental chiefs, were decisive and sponsoring factors for the Hitler regime, and that the citadel of the Nazi dictatorship is not to be found in the Brown House and its branch offices, but is to be found in the Wilhelmstrasse and the Ministries. National socialism knew only the political leader who had full power and leadership over all, on the one hand, and the professional civil servant in charge of technical administrative work, on the other. The concept of a political official is incompatible with the idea of a totalitarian state. "The Party commands the State" was the often promulgated maxim. Professional officials and specialists, however, being indispensable also in the National Socialist state, were left in their offices; they were even prohibited under law from resigning from office, but they were excluded from all and any political influence. Thus, it came about that a professional civil servant in high office was not able to put his own views into effect in opposition to decisions of political significance. At best, he could maintain himself in office and, in his daily routine work, struggle against expansion of arbitrariness and injustice. And that was what the civil service, on the whole, did to the best of its powers. At all times, the civil service repudiated the noise and incitement of Party propaganda, the rabble methods, and the arrogance of the political holders of office, and carried on an indefatigable guerrilla war against illegality and force. By continuing in office under oppressing circumstances in the years prior to the war, the civil service prevented much injustice, and, in accordance with its inherent attitude, did its best to contribute toward a legal course of developments. During the war, the civil service, by means of loyal and expert work, maintained the foundation of administration and supplies for the German people under the most difficult circumstances, right up to the end. That is its historical merit; to render them coresponsible for Hitler's crimes would be a historical falsification. The German civil service did not sponsor and did not abet the Nazi regime, but was itself a victim of Hitler's dictatorship.

My own 45 years as official under the Kaiser, under the Weimar Republic, and in the Third Reich, must be evaluated in this light. From the very start of my official career I only worked to serve the Reich. I did not adjust myself and make myself available to the political government that happened to be in power, for per-

sonal reasons, but much rather, faithful to my civil service tradition, I tried at all times to serve my fatherland to the best of my powers as a non-Party man during this epoch of changing forms of government. Despite the fact that—as was testified to here and as can be seen particularly from my correspondence with Hitler dating from the end of November 1932—I was opposed to Hitler's appointment to office, nevertheless I remained in office in order not to turn over my post to an exponent of National Socialist ideas, and in order to contribute my share, within the scope of the possibilities left to me, to a calm and legal course of development, as was desired by the majority of the German people. Ambition or personal reasons played no part in inducing me to stay in office. At that time I had already reached the highest rank of the civil service hierarchy and was eligible to draw the highest retirement pay. Rather than stay in office, the influence of which waned after the Reich President's death, it would have been a much more pleasant thing for me to have resigned. I did my best to oppose the course of developments leading up to a totalitarian state and to dictatorship. In the cabinet meeting of March 1933, which I attended as the Reich President's deputy without the right to vote, I objected to the Enabling Act as proposed, and I recommended that the enabling powers be restricted to questions of labor and economy, as can be seen from the minutes of those meetings which were submitted in evidence by the prosecution. I manifested my personal repudiation of the National Socialist Party by not joining either the Party or any of its affiliations and by keeping my office free from all Party ties and Party influence.

Hitler and the leading Party men were aware of this, and that was the reason for excluding me from any and all political activity.

From the fall of 1934 I was restricted to the sphere of ceremonials, decorations, and clemency pleas. Wherever, in this restricted sphere, I was able to help justice and lawfulness, ethics and humanity, against arbitrariness and violence, I did so—often, as can be seen from the evidence introduced—at the risk of danger to myself. That in so doing I was able to prevent much injustice and human suffering, and that I was able to help innumerable people of various nations and races convinced me, even in the years of an increasing reign of police and violence, that I did right to remain in office and to have adhered to the principles of justice and humanity within the sphere of my activity. Particularly in my work concerning the administration of law, I never had the intention or was conscious of sponsoring measures designed to subordinate the law to political force. On the contrary,

I was always driven by the desire to prevent terrorism by the law in order to maintain order under law. Consequently, it is a biased distortion of facts on the part of the prosecution to say of me, at the end of their trial brief, that I had prostituted my knowledge and my reputation as an official in favor of the criminal program and the criminal activity of the Nazi regime. Against such a charge, I can only say that at all times, and particularly under the Nazi dictatorship, I detested and fought against violence and lawlessness.

In their final argument the prosecution dropped and formally withdrew their charges against me of participation in crimes against peace. However, as far as the sole charge now remaining against me, that of crimes against humanity is concerned, I am not conscious of any guilt. In the same manner, as, throughout my life, I worked against war and for peace, I expended all the power at my disposal to combat injustice and force in favor of everything that is moral and just.

PRESIDING JUDGE CHRISTIANSON: Does the defendant Dietrich wish to be heard?

DEFENDANT DIETRICH: May it please Your Honors. Addressing my closing words to you here today is the second time in my life that I have spoken in a courtroom.

In the autumn of 1941, a few weeks before the beginning of the war against Russia, I stood before the German People's Court in Berlin, not as a witness for the prosecution but as a witness for the defense of the chief of the foreign press section of the Ministry of Propaganda, Dr. Karl Boehmer. Hitler wanted to make an example of this case. He had demanded a death sentence to be imposed upon Boehmer for his alleged betrayal of military secrets to foreign diplomats. Dr. Paul Schmidt, the chief of Ribbentrop's press section, was opposing me at that time as informer and main witness of the prosecution. He is the same man who stood opposite me here once again, before this Tribunal, on 5 February of this year, but this time not as a main witness for Hitler's prosecutors, but as main witness for the prosecution of the American Military Tribunal. This same man, at that time, expected a reward from Ribbentrop, who wanted to remove Boehmer. Now he has also a reward from this prosecution staff which set him at liberty.

I was able to make it clear at that time, before Hitler's People's Court, that I, the superior of the defendant Boehmer, possessed no knowledge in advance of Hitler's plans of war against Russia. The fact of my ignorance saved my subordinate at that time from Hitler's sentence of death. In order to save the prosecution's face, Boehmer was given 2 year's imprisonment on probation, and

he was killed in action as a soldier in the East. How could I have dared, at that time, to testify against Hitler's charge by alleging my own ignorance, if he himself had initiated me into his secret plans? If Hitler had not known perfectly well at that time that I possessed no knowledge, or if I had overthrown Hitler's charge by perjuring myself, I would no longer be here today, for Hitler would have handed me over to the judges.

Nor did Hitler initiate me into his other secrets any more than he did in the case of Russia. He was especially anxious to keep them hidden from me, a publicist and man of the press.

The prosecution imputes actions to me which I did not commit; knowledge which I did not possess; and motives which are contrary to those by which I was guided at that time. This substitution of false premises which, with apparent logic, lead to false conclusions used to be called simulated logic by the old Greeks. This is the method which has removed the prosecution so far from reality. It has made use of this kind of logic in order to create a grotesque picture of my personality and my life from its own ideas a *posteriori* and from the *camera obscura* of its own desire.

I admit that I made political mistakes, committed errors, and was the victim of deceptions; but I did not commit crimes against peace and against humanity. I made the mistake of believing in Hitler's statements to the effect that he wanted to establish the blessings of peace in the hearts of the German people through social unity. Throughout the tensions in foreign policy in the pre-war years, I believed in political but not in military solutions. I was always of the opinion that Hitler was making use of the press in order to strengthen his hand in negotiations with the rest of the world. I did not incite war, but on the contrary I tried to bridge the gaps.

I do not propose to repeat the testimony of witnesses who have testified here as to my peace-loving sentiments, but I might take the liberty to call to mind an appeal which was published in the newspapers, in almost all countries of the world at that time. On 6 February 1939 I appealed on my own initiative to the solidarity of newspapermen of all countries to support the maintenance of world peace by joint action as one body. At that time I spoke in the following words to the assembled representatives of the world press:

> "If we all make a passionate effort on behalf of peace and write in favor of peace out of a sense of the deepest human responsibility, if the newspaper and press services which you represent publish your appeal, and if you can manage to become

the advocate of the peaceful interests of humanity with the same passion, then no government in the world will be able to act against this phalanx of public opinion. I do not know whether you will succeed in getting your newspapers to do this. In any case I should never like to reproach myself with not having called your attention to this matter at a moment of decisive importance for world peace."

And how was this appeal received at the time? When President Roosevelt was asked for his opinion about it by newspapermen at a press conference in the White House he said in reply: "The matter is of no importance. This man is a minor official from the Ministry of Propaganda." At that time, therefore according to the words of the President of the United States, I was a minor young man of the Ministry of Propaganda, whose peaceful intentions, to be sure, were not doubted, but who was considered of too little importance to realize his intentions. Today according to the prosecution I am supposed to have been the great war propagandist and more powerful than Goebbels!

When my country was at war I supported its war effort by my publicity work, as was my duty. But I never used my pen to call for inhuman actions; I never called for the violation of the laws of war. In no field of publicity did I violate the internationally recognized principles of political and military ethics. I never participated in persecutions of or actions against the Jews, or uttered a word in favor of inhumanity.

Today it sounds like an irony of fate that in 1921 I wrote my doctor's dissertation on the Berlin sociologist, Georg Simmel, who died on 26 September 1918. In his theory of knowledge he was a passionate opponent of the individualistic way of looking at modern social problems. At that time I was impressed by his doctrine of the necessity of social methods of research in the sciences, and of the social point of departure in all sociological thinking, and his insistence on turning from the individual to the community.

In my treatise on "The Philosophical Foundations of National Socialism," which was published in 1934, I gave the National Socialist conception of the state an interpretation which was in conformity with my perceptions at the time. As against individualistic thinking I set up community-conscious thinking as a demand of the future. I thought that I perceived the kernel of the National Socialist conception of the state not in the idea of race, but in the universal idea of the community. At that time Rosenberg accused me of having carried racially foreign ideas over into national socialism because he, Rosenberg, did not consider Simmel to be of German blood. He banned my book, as has been testified

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here, from the entire National Socialist educational work. What a distortion of facts it is when the prosecution today accuses me of Rosenberg's racial ideologies!

Anti-Semitic polemics were carried on in the German press in wartime at the orders of Hitler, Goebbels, and Ribbentrop, who claimed in justification that international Jewry had declared that it was Germany's enemy in war. It seemed to me that such press polemics were a journalistic dispute with Germany's external enemies and, therefore, legitimate. It had nothing to do with the measures taken by German Government authorities against the Jews. I was in no way involved in these measures.

I had no knowledge of the extermination of the Jews. This has been confirmed here by the witness Lorenz.

My credibility was abused; that I must acknowledge. But never, up to my dismissal, did either Hitler or Goebbels ever require me knowingly to tell or write an untruth. When they made such a demand to me in March 1945 in connection with an atrocity propaganda campaign against the Western Powers, I refused to do it, and was dismissed from my office.

I know that I did not commit any crime. Concerning this my conscience is at ease.

PRESIDING JUDGE CHRISTIANSON: Does the defendant Berger wish to be heard?

DEFENDANT BERGER: May it please Your Honors. The judgment of the International Military Tribunal of 1946 caused a great disturbance in all military circles of the Western Hemisphere. To every honest-thinking soldier it was clear that the provisions of the Hague Rules of Land Warfare of 1907 had long ago become obsolete as a result of the development of modern war. Particularly the new means of war—phosphorus rain, the atom bomb, and above all, partisan warfare, as a result of which the entire civilian population was drawn directly into the happenings of war—and all of these were illegal under the provisions of the Hague Rules of Land Warfare. In addition to that, all other existing concepts of war, which had developed in the course of centuries in Europe, were nullified to a great extent as a result of that judgment.

The disturbance which then arose was all the more justified in view of the fact that the intent was to create a new law which was to be universally valid, but by no means was it intended to create a barbaric law of the victor over the vanquished.

In a very frank manner the following questions were propounded: Under what circumstances does the officer personally become responsible in the execution of orders he has received? Under what circumstances may he refuse to execute orders given

him without rendering himself liable to be tried before a court martial? Is it possible at all to lead an army if the orders issued fail to be obeyed, or if the following out of orders issued is left to the discretion of the individual?

Very soon this uncertainty was clarified by an official announcement by the British Field Marshal Montgomery who in 1946 said: "The soldier's duty is not to ask any questions but to obey all orders given him by the army—that is to say, given him by the nation." This also seems to be the concept in the American Army. An American officer, having an assignment anything but enviable, said in a letter the following "(1) It is not the usual thing in the American Army for subordinated agencies to submit suggestions and recommendations to their superior agencies; (2) he himself has no other duty but to execute the orders given him by his superior agency." Thus, for the Western Hemisphere the old position is recreated, a position as a matter of fact, which was never challenged in the East, because in the East there prevails the law of the steppes which is "Win or perish"; and if orders are as clear as that, there is only one thing—to obey.

The answer to the all-important question, "What then is this new international law?" is an answer which the German people as well as the whole world are still waiting for up to the present day.

When the Russian campaign broke out, Germany, in spite of its initial achievements, was a besieged fortress; and for fortresses, under the rules of war valid throughout the world, special provisions of law are in effect. Nevertheless, at least as far as I know, it was never the Germans who initiated the hard measures of warfare. The German Government only believed it had to respond to the hard measures of the adversary by multiplied reprisals. I had no influence on such orders. I never implemented any such order, nor incited anyone else to do so. Anything that violated the laws of humanity—if you permit me to use this very worn-out term of speech, which is applied only against the Germans—anything that violated the honor of my Waffen SS, the honor of the German people, was ignored by me in full awareness of the responsibility such action entailed and in full knowledge of the penalty imposed for such action under a dictatorship. There was no threat that would make me deviate from my idea. I was willing at any time to take personal responsibility.

According to the opinion of the International Military Tribunal in Tokyo, of the 235,473 British and American prisoners of war held in German and Italian custody, 8,348 equal to 4 percent died. Of 132,134 American and British prisoners of war in Japanese custody, 35,756 equal to 27 percent died. It is a well-known fact

that the rate of mortality in Italian prisoner-of-war camps was substantially higher than in German camps; that the mass of British prisoners of war were taken into custody as early as 1940 and were therefore prisoners of war for five full years; that in the period from 1 November 1944 up to 15 February 1945 alone, we lost more than 660 British and American prisoners of war as a result of low-altitude flights and air raid attacks. It is further known that we not only took healthy prisoners of war, but that very many of the prisoners taken were seriously wounded and incurable, whose numbers also go to the debt of this account.

Does this not utterly refute the entire charge of the prosecution, since the normal mortality rate for the age groups between 18 to 35 years amounts to 1 percent per year?

Today, but only today, I know that the atrocious losses suffered in the concentration camps were due to malnutrition and forced marches in the last half-year of the war. The same fate was probably intended for the prisoners of war, too, but I prevented this plan from becoming effective by doing the following: I prevented malnutrition, in faithful collaboration with the Swiss Red Cross; I prevented the billeting of prisoners of war in cities exposed to air raid attacks, in conjunction with the Foreign Office; I prevented forced marches through my agreement with General Eisenhower. Your Honors, believe me, it is not very easy, even for a soldier, to live through many months in fear of being discovered of having failed to carry out orders, and to wait for months for the dishonorable death that entails.

With regard to the Mesny case, two sentences only—I did what I could to prevent the reprisal; this was testified to by the prosecution witness Colonel Meurer, though he stood under the very serious pressure of extradition to France. Where in the world will you find a colonel who, in wartime, is in a position to prevent a direct command of his supreme commander in chief and sovereign chief of state from taking effect? The order was received in my absence. If today, in America, in Britain, and in Russia, there are tens of thousands of mothers and wives who are welcoming home their sons and husbands healthy and safe, it is to my merit. I do not believe that Your Honors will concur with the opinion expressed by an interrogator on 5 December 1945, who said: "We would have preferred you had abstained from doing that; it would have fitted better into the picture." But one thing is sure; that the mothers of the wives in the countries I mentioned above are grateful to me, and that my German people are grateful to me.

Despite the endless maltreatments I have suffered through the last 3½ years, and despite the vexations to which my wife and

my remaining children were exposed, I would not act any differently today, precisely by virtue of the fact that I am a general of the Waffen SS and was Chief of the SS Main Office.

The prosecution endeavored to put this humanitarian attitude of mine down to my fear of penalty to be inflicted. A man who has seven times been honorably wounded in combat and buried alive twice as a result of air raid attacks, is immune from the charge that his actions were influenced by fear.

As far as my recruiting work is concerned, please, when considering it, bear in mind the American conscription law of 1940 and the amendment thereto of 1941; my educational work however [should be considered] in the light of only 10 percent of the former enemy propaganda.

Napoleon said: "Geography is destiny." This applies in a very special measure to Germany. Therefore, it is not a surprising fact that the struggle for new objects for life took its start in Germany. That struggle did not begin in 1933 or 1939, but at the very latest in 1918 after World War I, as a result of the unbroken tensions of the twentieth century. Since that day the world has not found peace up to the present day, and it will not find any peace until the decision is made one way or the other. We believed that as a joining link in the family of nations we could take over the mediation between East and West and achieve adjustment between the unrestricted private capitalism of the West and the brutal, hard, all-destroying state capitalism of the East, but without war. It was this profound perception that caused millions of Germans to become adherents of the NSDAP, and caused hundreds of thousands to assemble under the banners of the Waffen SS. There would never have been an NSDAP, at least no NSDAP of any significance, had not the German parliamentary system failed so tremendously despite the daily increasing and fully recognized danger emanating from the East.

It was in defense against bolshevism that the German people chose the NSDAP. It is true that the press of the Western Hemisphere for many years called this a German trick and propaganda, but they don't call it that any more. Already in 1946, William C. Bullitt wrote the following under the title of "The Strength of Our New Foreign Policy":

> "We find it difficult to believe that men of the great abilities of the Russians will permit themselves to be driven by their Communist masters to attack what we love, but it is so; and unless we are going to look the enemy in the face knowing that he is strong as the devil, that he is sly, cruel, and ignorant of the truth, it will be too late to save ourselves."

We had that knowledge 20 years ago. When, without our being consulted, war broke out, we believed, it is true, that it would be easier to defend Europe on the Vistula and on the Dnestr, than on the Rhine or the Marne, and accordingly we fought courageously, and we spent our last forces.

In the precipitated judgment of the IMT, hundreds of thousands of courageous men of the Waffen SS, with their wives and children, were stigmatized as being criminals; although at that time, at least in Russia, it was a well-known fact that the Waffen SS and the Gestapo had nothing whatever to do with one another, and that only 6 percent of the entire Reich Security Main Office were members of the Waffen SS. By means of this judgment the nucleus of the anti-Bolshevistic movement in Germany was destroyed, to whose benefit it will be manifested in the next few years or months. Although Russia itself took no part in this act, still here again Russia was the victor. The Dachau judgment in the Malmedy trial, which formed the basis of the inclusion of the Waffen SS in the concept of "criminal organizations," is already today no longer considered as legal. Let us now ask what is the basis of the Waffen SS. Nine thousand soldiers of the "VT" [Verfuegungstruppe] and approximately forty thousand untrained members of the General SS formed in 1939 the basis of the Waffen SS, which at the end of the war counted half a million men and almost as many dead as the whole American Army suffered during World War II. Almost one million men of all nations of Europe served in our ranks. Criminals too can organize, but they cannot set up an army of a million, an army which was distinguished by courage and discipline from the first to the last day. Such an achievement is only possible if an ethical idea is there which penetrates one and every individual. Such an ideal cannot be negative, but must be positive in character. Nation and fatherland, soldierly honor, courage, faithfulness borne by a positive Christianity, faith instead of nihilism, personal responsibility instead of collective responsibility—those were the fundamental pillars of our conduct. In addition to that, we had the knowledge that ideology will never be overcome by weapons or by money, but can only be overcome by a better or stronger ideal. Thus, all small and superficial questions receded into the background and in our ranks we had the Flemish monk fighting side by side with the Finnish pastor, and the Ukrainian Orthodox priest fighting side by side with the Moslem. Fighters are always believers and patriotic. The solution, was a united Europe, united not by simply leveling everything down, but by recognizing the faithful love that every individual bears for his own native country. Thus in the East, in the divisions of the Waffen SS, it

was not Germans, Swiss, Flemings, Frenchmen, Dutchmen, Danes, Norwegians, Finns, Estonians, Latvians, or Ukrainians who were fighting, but Europeans on a status of equality and enjoying equal rights. It was this soldierliness, this jointly shed blood, that we considered to be the best and most permanent link for a new Europe. It seemed to us to be the best guaranty for a permanent peace in this small and so disturbed continent of ours. We were the first soldiers of Europe. We were convinced that the organic development would unfailingly bring about a union between the European nations, as once before had been the case, when the idea of the individual small German state had to be overcome.

We have lost the fight because we had a leadership which ignored all actual facts and believed that it was able to do everything itself and literally to run havoc in order to put its ideas across; because it deviated from those principles under which it had been set up and trespassed on the road of crime; and because the Western World did not know that if Germany lost the war, all Europe would suffer an irreparable defeat.

It is the easiest thing in difficult situations to protest and to resign from office—provided you are permitted to resign from office. And once you have closed your doors, shut your shutters, and drawn your curtains, it doesn't require any courage to criticize, nor does it serve any purpose. It does require courage and personal risk to maintain the law under which one started, to maintain military honor under all circumstances—and whatever was possible in this respect was done by me.

The unbiased historian will not deprive us of the right to claim that we went down fighting as the most courageous soldiers for a great political aim, that is, for the political freedom of Europe in the best sense. The same unbiased historian will further verify that we men of the Waffen SS knew nothing of and took no part in Himmler's crimes.

PRESIDING JUDGE CHRISTIANSON: Does the defendant Schwerin von Krosigk wish to be heard?

DEFENDANT SCHWERIN VON KROSIGK: In these, my last statements, I feel myself just as bound to the duty of observing the absolute truth as though I were still testifying in the witness stand. It seems to me that one of the basic problems of this trial has been the question of whether, and if so to what extent, men are authorized or even bound to exercise an official activity under a political system with which they are inwardly at variance.

I myself come from the civil service, of which I was a member since 1909. In my capacity as [Reich] Minister I did not consider myself to be a politician, but to be an official. It was the pre-

rogative of the civil servant to continue in office until unfit for service or having reached the set age limit. Therefore, I always considered it also to be the duty of the civil servant not to resign from office unless one of these two factors were present; he owes his country lifelong service. In accordance with this basic concept, I, the same as the preponderant majority of other officials, who likewise were inwardly remote from national socialism, continued in service even under the Hitler regime. Throughout the years of Hitler's domination, it was my endeavor to intercede in my official sphere in favor of justice and decency, to maintain valued institutions, and to help threatened and needy people.

However, in 1933 I was already a minister and chief of a large administration comprising 150,000 people. I was not only responsible for my own decision as to whether to go or to stay, but I knew that the fate of innumerable officials depended on this decision of mine, and beyond that, also their attitude and conduct depended on that decision. The German civil servant was no political man. To a great extent he even refused to be a member of any political party. A political party civil service never gained footing in Germany. When, in 1918 and afterward, a purely party civil service gained footing, it was that one which became one of the strongest weapons of national socialism in its struggle for political power. To a very particular extent the Reich Finance Ministry remained a nonpolitical and purely technical ministry, with its employees remote from any party ties, employed only for their technical knowledge.

I am grateful to all of my predecessors, of whatever party they may have been, for having maintained this characteristic of the Ministry. I considered it to be my duty not to flee from my post in a decisive hour, but to continue my work along the same lines. In the subsequent years, I came to appreciate how necessary it was to do that. On an ever-increasing scale the attempt was made to make also my administration dependent on the Party. This attempt was made in a twofold manner. First of all, it was made by assigning to the Ministry and to its external administration, representatives of the Party. Secondly, by the efforts of the Gauleiter to have the local finance administration directly subordinated to them. I may claim for myself that I was able to preserve the finance administration from such encroachments and to maintain decency and propriety in tax and custom administration. Thus, no arbitrariness and no corruption came into this administration, and I was, and still am, grateful to all officials of my old administration who worked along the same line. I know from my own bitter experience that neither I

nor the other officials as a whole were able to achieve everything that we endeavored to achieve.

I remained excluded from important political decisions. It may be that my nonpolitical attitude proved to be a disadvantage in the struggle against unscrupulous persons. There resulted for the civil servant a tragic conflict in view of the fact that though his genuine intentions and his moderating action may have been successful in individual cases, as far as the entire course of events in the dictatorship was concerned, they remained without any influence whatsoever. He had to experience that in the Third Reich, without receiving any thanks, he was merely tolerated as a specialist, or suspected as a saboteur, only later on to be punished as having been a tool of the dictatorship.

Now again we are faced with the danger that a new Hitler myth may arise, the idea that Hitler himself, after all, was not so bad; that he might also have been successful if he had had better collaborators, but the people he had were worthless, rascals, or traitors. The thesis of the prosecution, of Hitler having been a man dependent on his associates, is adding fuel to this fire. Whoever has the conviction, as I have, that everything in the war of errors and crimes that took place during the war, is to be attributed exclusively to Hitler, can have one desire only—never again a Hitler. Never again a dictatorship, nor any dictatorship of a class or of a political party.

I know from my experience of the last 12 years, how difficult it is to discern whether, and if so, from what period of time on, a movement develops to form a danger to the fundamental principles of human community life. The movement of national socialism too was embedded in a pronounced and deep nationwide sentiment, that is, in their disappointment over omissions and derelictions in the field of politics and economy, and the absence of an inspiring idea, that undermined the citizen and socialist parties. Thus, the longing of a great people to find political recognition externally and social justice internally was exploited by an ingenious demagogue, and guided in these terrible directions.

But there is one thing I have also experienced in those 12 years —that in evaluating a person the important thing is not to ask whether he was pro or con, but why and how he was pro or con. Thus, as I have already told you in the witness stand, such movements which may be likened to unpaid bills presented to the leading ranks then, as today, are not to be overcome by force, but only by facing them with a great ideal. That ideal could, and still can, in my conviction, only be Christianity—a Christianity of deed, which does not merely preach love for one's neighbor, but

practices it in actual reality, and thus turns into a compelling force. That was the ideal that I tried to serve. I know best myself how imperfectly and with what weak forces I served it.

Let them charge me with having made political mistakes, but nobody can challenge my good intentions, in pursuit of which I tried to serve my people by a road that I considered to be my duty. Therefore, I consider it bitter that the prosecution should charge me with the persecution of human beings, with spoliation, and the preparation of an aggressive war. Intentionally and knowingly I never participated either in spoliation nor in persecution. I did everything in my power to prevent these things and to help the oppressed.

If I were to be punished I would have to bear it, for having worked for my fatherland in wartime, even though the war may have been an unjust war. I have described the conflict in which I found myself when I testified in the witness stand. If that were guilt, I would have to bear the consequences, but I would consider it unjust if I were to be convicted on the charge of having participated in launching a war. In the First World War I lost two brothers. I had nine children. I could not imagine anything more terrible than another war. Up to the very last minute I worked for a peaceful solution. I believed in it, and I hoped for it. My error is heavily atoned for by the feeling that the work that I carried on with other intentions and in ignorance of the plans of the leading men was exploited by them.

I am confident, Your Honors, that in my belief in a just verdict, I will not once again suffer disappointment.

PRESIDING JUDGE CHRISTIANSON: Does the defendant Puhl wish to make a statement?

DEFENDANT PUHL: No, sir. I fully agree with the statement my attorney made in my final plea.

PRESIDING JUDGE CHRISTIANSON: Very well. Does the defendant Rasche now wish to make a statement?

DEFENDANT RASCHE: Your Honor. I likewise, on principle and in detail, concur with the statements made by my attorney, which represent my own wording.

PRESIDING JUDGE CHRISTIANSON: Very well. The defendant Pleiger. Do you wish to make a statement?

DEFENDANT PLEIGER: May it please Your Honors. The road that led me to executive positions in economy did not lead me via high political office. It was not based on inherited riches, nor was it based on any desire for personal gain. In the hard years of my youth, out of my own strength I created economic independence for myself. I built up a healthy enterprise, which appears valuable enough now to have been placed on the dismantling list.

This is not an armament enterprise but is a special enterprise for the mining industry. The experiences I gained in periods of boom and depression came to be the basis of my economic concept. Economic deliberations and knowledge matured my idea that the big iron ore deposits of Salzgitter should be opened up and their ore smelted.

New assignments which came to me in connection with this first task, in the course of time from the government, increased with such acceleration that sometimes it did not seem to me to be right in the interests of an organic growth of the plants entrusted to my charge. In the course of the war these assignments took on such proportions that very often it exceeded the strength of one single individual. I did not push myself forward for these tasks, but as a German citizen I did not want to nor could I refuse to answer the appeal made in wartime, and I wanted to contribute my share in discharging tasks entrusted to me. I would have served myself to greater advantage had I devoted my efforts to my private enterprise. Thus, it came about that I served only my fatherland. For myself I sought nothing and gained nothing.

The prosecution is now trying to hold me responsible for crimes against humanity. They seek to make me out to be a slaveholder. From my home I know the hardships of the miners' lives. I know from my own hard school the cares and wants of the worker. Therefore, in all assignments allotted to me I tried unceasingly to use my influence wherever I could to create the best living and working conditions possible in the circumstances prevailing.

I felt that the machine should serve the man, not the man serve the machine. The aim that I had in mind was to have really social industries, and this was an aim which I emphasized as a duty to all my plant leaders and all the superiors of the employees over and over again. In staffs like those of the Hermann Goering Works which had hundreds of thousands of employees, all, of course, were not angels. Nevertheless, after searching for years, the prosecution was able to discern only individual cases of omission and dereliction on the part of the supervising bodies; but there was not one single case in which I failed to act when such omissions were brought to my knowledge.

The fact that my welfare work was not extended to the concentration camp inmates, assigned against my wishes to work in the Hermann Goering Works, is no fault of mine. As a matter of fact, I did not even know of the alleged unsatisfactory conditions. I was by no means an independent chief in my sphere. The Hermann Goering Works, the same as the coal economy and the Berghuette-Ost, were not independent but were incorporated into the complex organization of a totalitarian state. I could only

do my best for the workers, in the way of improving living conditions, that could be done within the framework of the State, and within the provisions of the law. I claim in my favor, particularly in this respect, that at my own risk, by my own measures, or by measures undertaken by my associates, I did more than my duty when the issue involved was to improve the living conditions of the workers.

My welfare work was applied without distinction to the German worker and to workers of other nationalities, because my social-mindedness recognized no differentiation between nationalities. I am not responsible for the recruitment of foreign workers for work in Germany. I was not able to prevent it either; but I always tried to have these people assigned to work in accordance with their abilities, and to see to it that the young and healthy workers got the heavier work, and the older people the easier work. In no case can it be said of me that I did not advocate the same welfare for the foreign workers as for the Germans.

The greatest difficulty which had to be overcome was the heavy air attacks on the works, during which the camps and billets of the workers often fell victim. Particularly on those occasions it was shown that the foreign workers, in the same way as the German workers, worked shoulder to shoulder with them in order not only to save their own living quarters but also to save the plant in which they worked. It was not always possible to reinstate normal living conditions immediately, and sometimes it was necessary to improvise temporarily; but whatever was humanly possible was done.

It is an admitted fact that the mass attacks of the enemy bombing units was intended to bring the working population to despair by destruction and death. The fact that the enemy in pursuing this aim did not care that it distributed death and misery among foreign workers is too none of my responsibility. The insight that I gained in the last years of the war into the economic potential of the Reich very often instilled me with grave misgivings. The heavy air attacks entailed difficulties which had never been foreseen. Very often I was inclined to doubt the sense of this struggle; but I never doubted that it was my duty, the same as it was the duty of every soldier in the line of combat, the duty of every wife and mother at home, to devote my full strength to the service of my fatherland.

I do not claim in my favor to have been a member of a resistance group, but I do claim that over and over again I protested in the sharpest manner against orders, even those given by the highest authorities, if in my opinion those orders demanded things that were impossible or perhaps even absurd. I went to the very

limit of what was possible. The limits were not determined by my own personal courage, but by the sense of responsibility for those people whom I had to represent, and whose spokesman I was.

The prosecution also charges me with having plundered in Europe and having grabbed valuables like a thief. In reality, all I did was to reconstruct what was destroyed and create new valuables. It was not my duty to determine titles of property, but it was my duty to see plants put into operation, to expand them, or to erect them again. The Poles in Upper Silesia, and the Czechs in the Sudetenland, the Austrians in Linz and Styria, and the Frenchmen in Lorraine in examining my activities during 1938–1945 find that I drew up not only plans for modernizations and manufacturing programs, but they find actual mining constructions, plants, and modernized enterprises which conform to the very latest standards of engineering. In addition to that, hundreds of thousands of Reichsmarks were expended for modern dwellings and social institutions of all kinds for the employees of the works.

These were achievements the like of which had not been performed in those countries for decades past. Those allegedly spoliated are actually enriched. I have never contended, and do not propose to maintain, that all these performances were achieved by me and by my associates because we were so much more efficient, and had so much more knowledge than the former directors of these works. This contention as contained in the prosecutor's final plea is in flagrant contradiction to my very clear testimony in the witness stand. I testified in detail to the amount of knowledge and experience our works owed to Brassert and his experts, and I myself designated Brassert as being my own teacher. It does not change anything in my statements that the works located in the occupied territories benefited by those experiences. But they also benefited by my will to modernize and to expand them in a form which had not been possible to the owners up to that time. In fulfilling my duty, it was always clear to me that mining and foundry works are industries of the locality, that in the final run they always belong to those people who live on the same soil and who work in respectful appreciation of the treasures of this soil.

I may be reproached for having made mistakes in that connection. I may also be reproached for having overestimated the possibilities of the various economic combinations, but one cannot accuse me, as the prosecution does, of having helped to spoliate countries. It is true that I also disposed of machinery which was assigned to us by the Wehrmacht without, on my part, finding out whether the Army High Command had violated international

law. Even now at the end of this trial I am still not familiar with the legal position. I cannot see why it should be prohibited for a military commander in chief to dismantle such works as the Stalowa Wola works prior to retreat in order to use the machinery elsewhere, when, on the other hand, he is permitted to destroy the whole plant with its machinery, installations, and human beings after the retreat has taken place. I am of the opinion that the timely evacuation of the works is not only reasonable, but also the more humanitarian, and thus more just.

It never occurred to me to act in violation of law. In any case my motives were never guided with a view to personal advantages, or even the aggrandizement of the Hermann Goering Works.

I looked at such machinery with other eyes. I looked at it through the eyes of work. I never deprived any seamstress of her sewing machine, any smith of his anvil, any human being of his tools. But today, if I were to see machines half destroyed and out of operation, I would again see to it that the wheels should revolve, and again would I be charged unjustly with having committed a crime.

The charge of being guilty of crimes against peace is the most serious charge that can be raised against a human being. I trust in the discernment of my judges to recognize that I cannot be liable for any such charge. I had no assignment and no possibility of influencing politics. I was just as much surprised by the disastrous war as every other German was. My task was most seriously hampered by the outbreak of the war. But I have been more affected by the charge raised by the prosecution that my endeavor to exploit low-grade ores was only a farce and a pretext to arm for aggressive war. When I defend myself against that charge, I am defending my entire life's work. It is a very easy thing today to get up and to say, "We were opposed to Pleiger's plans, and therefore, we were fighters in the resistance movement." I had to carry through my convictions against the opinion prevailing then, and even now, in circles of science and industry, and also against the opposition raised by the National Socialist State machinery. In doing so I found the aid and the sponsorship of international authorities who had nothing to do with national socialism. It was only through their help that I was able to win over Goering, and through him I was able to carry out my ideas. It was my objective to create permanent works which could furnish labor for hundreds of thousands of human beings; to create a modern enterprise from which the entire economy of Europe would derive benefits. Under different political conditions I would have pursued the same idea. The struggle to utilize the raw materials, little thought of up to

then, might have been a tougher struggle under a democracy, the road perhaps a longer one; but the problem for which I am just as much convinced today as I ever was that a solution is necessary, is the same problem. It is the same problem which today once again is facing the men and powers now attempting to reconstruct European economy. The very near future will show me to have been right.

[Recess]

PRESIDING JUDGE CHRISTIANSON: With respect to the defendant Koerner, I understand that the defendant Koerner waives the making of a final statement in his own behalf. The record will so show. Defendant Kehrl, do you wish to be heard?

DEFENDANT KEHRL: Yes, Your Honor.

PRESIDING JUDGE CHRISTIANSON: You may take the podium.

DEFENDANT KEHRL: I am quite aware that in this trial I am what the prosecution regards as a minor and uninteresting case. However, I respectfully request the understanding of the Court for the fact that, just as for everybody else, my own case appears important to me, and must appear so. I owe it to my name, my family, to all of my numerous faithful associates, and also to the German people, as such, whom having served to the best of my ability is allegedly my crime. I owe it to them to defend my activities and my aims as thoroughly and as exhaustively as if I were a major case.

I am exceedingly grateful to my defense counsel, thanks to whose clever, thorough, and conscientious work abundant evidence has been compiled. May I respectfully request Your Honors, above all, to consider this material just as patiently and just as thoroughly as you have hitherto followed the proceedings.

I could possibly have spared the Court, my defense counsel, and myself a lot of work, because on the basis of the prosecution's own documents, and even their own untenable legal theory, it could have been proved that the charges against me are without foundation. This would have been the case especially if those parts of the documents which were not introduced had received consideration. But after having been indicted in accordance with the will of the prosecution, I now desire to be acquitted, not because the prosecution have failed to prove their case, but clearly and unequivocally on the grounds of proven innocence, even on the basis of the legal theory established by the prosecution in their final plea. That alone is the reason why we have adduced such abundant evidence.

Apart from the testimony of many witnesses, we were in a position to submit numerous documents emanating from the time

of my actual work. Even the prosecution, despite their vivid fantasy, will not succeed in making black out of white with respect to this documentary evidence. Naturally, I regret very much indeed that the Tribunal themselves did not hear either of my three witnesses, but I am confident that, just in their case, even the dead letter of the transcript will reveal their living personality. I invite Your Honors' special attention to the cross-examination of these witnesses by the prosecution. I owe thanks to the prosecution for having elicited, for instance, during many hours of cross-examination of the witnesses Dr. Koester and Dr. Voss, at least the outlines of the true picture of the Protectorate. The picture they portrayed makes it understandable why now in the year 1948 the people in Czechoslovakia, in wistful afterthought, called the German Protectorate by the significant name "slata Protektorata," the translation of which is "the golden Protectorate."

The prosecution, in cross-examining the absolutely unbiased affiant Dambergs, a Latvian national, threw full light on the work of the Ostfaser, G.m.b.H., on the background of the Bolshevist past of the years 1940 and 1941. The results speak for themselves.

In our closing brief my attorney has successfully endeavored to furnish the Tribunal with an objective guide through the abundance of evidence. Especially with respect to count eight of the indictment he has collected meticulously all material of which fragments cropped up somewhere or other during the past year of this trial, and he formed it into one whole. He has thereby dispersed the nebulousness with which the prosecution have endeavored to cloak this problem legally and factually. It is here that the prosecution are attempting to abuse the judgment of the IMT, whereas otherwise they are eagerly anxious to bind this honorable Tribunal to every letter of the IMT judgment.

If I may entertain the hope that the Court will give their kind consideration also to this material, then I can confidently await the verdict as to whether I am a war criminal in the form of a participant in a criminal organization.

The prosecution's attempt in their final plea to challenge my credibility does not touch me at all. Their claim in this connection is no more sustained by the clear results of the presentation of evidence than most of the other assertions of the prosecution. In this particular case they are trying the well-known trick of successfully combating an assertion that was never actually made. A trick, incidentally, which represents the principal content of the prosecution's final plea.

It gives me great satisfaction that my intentions were under-

stood not only by numerous faithful, conscientious, and selfless associates, for whose work I consider it a matter of gratitude and duty to testify as well, but also by the industrialists and businessmen of the occupied territories themselves. Opportunism, hate, propaganda, and the hysteria of war and victory psychosis have not succeeded in causing a single Frenchman, Belgian, Balt, or Ukrainian, or even a single responsible agency of these countries, to place themselves at the disposal of the prosecution in their case against me. In fact, the expert report of the French Commission for Reparation Questions, submitted by the prosecution, is one of my most important defense documents, and the chief source and basis of the refutation of the prosecution's contention.

I can only wish with all my heart that every territory which in the future should have the misfortune of being occupied by hostile armies may find men prompted by the sentiments which guided me in word and deed, and which I strove to put into effect even outside my own personal domain of work.

It is not more than a year ago that the prosecution and the propaganda directed by them emphasized again and again that the majority of the defendants indicted here in Nuernberg are indicted as symbols. Today they choose to deny that, especially as, at least in one or the other case, they are possibly beginning to realize that they have erred with infallible instinct in their selection of such symbols. But without this symbol theory this trial, its propagandistic direction by the prosecution, and the selection of the defendants hardly seem understandable. The basis of this symbol theory however is the claim of the collective guilt of the entire German people.

I have naturally asked myself the question for what group of Germans I am supposed to be a symbol. I was entrusted with tasks of some major importance only in the closing phase of the war, at a time when power and responsibility were no longer sought but actually shunned by most people. I trust therefore, it will not seem immodest and arrogant on my part if I regard myself as one of the symbols of tens of thousands of decent and conscientious officials who were trying to do the right thing at home and in the occupied territories in a period when their nation was fighting for its very existence. In spite of the unspeakable sufferings of their own people these men were, to be sure, without hate or arrogance, endeavoring to give the war its dues, but they were also prompted by the desire to avoid unnecessary hardships or even injustices. And these men were also merely representative of many millions of Germans whose sphere of tasks and duties permitted them to grasp but a small segment of historical events.

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All of them were inspired by the determination to do their duty as they understood it, at the post which they believed fate had allotted to them, loyal to the last to both their nation and the oath they had sworn in good faith. The overwhelming majority of them were likewise imbued with the desire to respect the law of God and man.

If I have been able to assist even a little in prompting the understanding and the defense of these people, with whom I feel myself inextricably bound, I shall look back without regret upon the 3½ years of confinement which lie behind me.

I also consider it my duty and my destiny that my words are the last voice of a German who can speak here in Nuernberg for them, their work, their will, their hopes, and their faith.

Before Your Honors there lies a mountain of paper, comprising thousands of documents, so-called and real. It is not your most difficult task to peruse them and the words they contain; the real difficulty and the actual problem would seem to be to recognize behind them life and events as they were, even if only in nebulous contours. We can hardly hope that you can fully understand us. You come from a happy, spacious, and rich country. Over there, narrowness of space is as unknown to you as caste feeling, class hatred, and class agitation. The national prejudices, born of the history and traditions of more than a thousand years, which prevail among the peoples of Europe, and which still burden them like a hypnotic magic spell, are likewise unknown to you. And yet every one of us has endeavored to give you a small insight into a world which cannot be pressed into the primitive picture of distortion and hatred which the prosecution have sought to portray. I do not wish to follow the prosecution on their path of trying to write history by means of slogans, or of regarding God's world history as a playground for criminals and lunatics. The time is not yet ripe for writing objective history. My sole object today is an attempt to show how millions and millions of Germans subjectively regarded events at that time, no matter whether their concepts were right or wrong, or by what motives they were led at that time, or what aims they thought they were serving. To acquire even a vague conception of this is very difficult for those who did not experience those decades in our midst, who did not feel the pulse of time which often determined the course of history more than did facts and persons. Even the prosecution seem to have had some feeling of this when they speak again and again of the "background," which they allegedly are trying to portray, but to the clarification of which they have contributed little or nothing real in their exaggerations, one-sidedness, and distortions.

It is by spiritual forces and ideas that world history is moved. We cannot understand world history by regarding only the pathological degenerations emanating from these forces and ideas, but only by trying to trace their sources. The great French Revolution at the end of the 18th century derives its historical meaning not from the guillotine and the murderous crimes which terminated it, but from the ideals of equality, liberty, and brotherhood which marked its beginning. But how can Your Honors be expected to understand the events, the people, their deeds, and motives, without an insight into the world of their thoughts and feelings? You did not see our people after World War I—their best sons killed in action, millions mutilated, millions starving, all of them utterly worn out, and also darkly and vaguely conscious of themselves having contributed to their suffering by failings of their own. You did not see how in this nation a seed long sown of class hatred and agitation grew to a terrible extent and ended in civil war, how inflation destroyed the last material basis of the past. You did not experience how the poison of nihilism began to corrode all ethical values, how a cold civil war, year by year, also in time of pseudo-economic prosperity, undermined all foundations of human community life. You did not experience how economic unreasonableness and political failure drove economic life more and more to a standstill, and how in face of this situation the parliament split up into numerous parties, and was obviously united only in one purpose, to stop every government from governing. You did not see how the economic misery at the beginning of the thirties fanned the cold civil war into a vivid flame. A study of the present day utterances of press, radio, and public speeches beyond the Iron Curtain can alone convey a vague conception to you of the hatred, mendacity, incitement, and disintegration which raged in Germany before 1933. To some that appeared as a matter of fate and as something inevitable. Others believed the theory that this was only the iniquitous work of small circles of political agitators. Mightier and mightier rose the call against class struggle and disunity, and for the reconciliation of all classes and mutual cooperation. And it was this call which finally overcame all. Hopeful hearts wanted to believe that which alone promised a way out of a hopeless situation. Millions of nonpolitical persons gave their vote not to incitement, but to reconciliation; not to sluggish inactivity, but to resolute work; not to selfishness, but to the will to sacrifice; not to hatred, but to love. One was reminded of Pascal's words—"The heart has its reasons which reason knows not of."

The indomitable force of will and of common efforts seemed to accomplish the miracle. The wheels began to turn again, unem-

ployment and social misery began to dwindle, cooperation and understanding began to grow between the townsman and the farmer, between the bourgeois and the laborer, between employers and employees. The key to the solution of the social problem, which burdened not only Germany but the whole of Europe, seemed to have been found. The German worker began to gain the feeling of full equality, and he was, and could be, conscious of his own value, and feel sure that his value and importance were esteemed, and that his rights and possibilities to live were safeguarded. In view of these facts, much that was negative faded away and appeared to be only the slag of an almost bloodless revolution, a slag which could and would soon be done away with. A personal purge, it was hoped, would soon discard many unhealthy and unclean features which the upheaval had brought to the surface, and which were not regarded as the sprouting seed of new evil. Then the outbreak of war put an abrupt end to the dream of a better future based only on mutual and peaceful work.

Your Honors, you did not experience the sorrow and deep resignation of the German people when the war which destroyed all hopes broke out. It was received as a heavy burden of fate which seemed inevitable to those who believed in the leadership they had. No victory and no triumph aroused the joy and exultation that accompanied reports of victory in the last war. The feelings of those governed were, as is so often the case, more infallible than those of the men who governed them. The tempestuous clouds in the East lay like a nightmare on every heart.

But in one thing almost all were of one mind, that is, to do their duty at the post allotted to them. In the course of their past life they had experienced such a stormy period of world history that most of them had accepted the wisdom of Socrates who said: "I know that I know nothing." The fewest of them harbored the arrogant conviction that they themselves, from their frog-like perspective, could have an insight into the meaning of world events. They followed the leadership in which they put their trust and were determined, remembering the last war, that this time they would not be the ones to fail.

Your Honors, you also did not experience how, month by month and year by year, the squadrons of bombers flew unhampered into our country and reduced town by town to shambles. You did not experience how millions of people, one might even say almost an entire nation, crept day by day out of their cellars in the morning after the ever-increasing night bombings, and tired and worn-out made their way over rubble, past the countless dead of the preceding night, to their places of work. And all that at the time when, as the prosecution would have it, the people ought

to have listened and searched for rumors which were supposed to have started to crop up then in the East, more than a thousand miles away, regarding the hideous crimes said to have been committed there.

But even then the individual German entertained no hatred, for instance, against the foreign workers who worked with them side by side. The day bombings and night bombings rather made all of them companions in fate and comrades. Even now one can hear in France daily that the French laborers who have returned from Germany are the most effective apostles of reconciliation and peace, particularly with us Germans.

Your Honors, you also did not experience the apocalypse of the last months of war in Germany. You did not experience how the destruction of all traffic communications, the heaping-up of those put to a murderous death by the air raids, the incessant influx of millions of refugees from East and West, destroyed every possibility of orderly life and work and turned it into chaos. You did not experience how a feeling of the end of all things spread like a mass frenzy and converted the chaos, created by the force of facts, through horrible pathological aberrations into a veritable inferno. But the millions of unknown and nameless Germans at home and in the armed forces of whom I am speaking, continued to do their duty as they saw it, as long as there seemed to exist even the shadow of a hope, faithful to their nation and their oath. For they believed that allegiance and loyalty are just as necessary foundations of life as law and justice. Moreover, at that time they had no idea that the man who held the fate of the nation in his hands had been combating a serious malady for years past with unimaginable quantities of drugs, and that he, thereby, being both physically and mentally unbalanced, no longer resembled the man to whom they had sworn their oaths.

And now you, Your Honors, have come to us across the ocean to find the truth and mete out justice, as far as the ties of the IMT judgment and the Control Council Law permit. That is certainly a task which almost exceeds human capacity. Right from the beginning you have consistently subdued every attempt to turn these proceedings into a sensational show trial, and I am fully confident that it is your will to exercise complete objectivity and justice. But what is to be the yardstick of justice? Can you find it in examples from the past? Can you find it in the happenings of your happier country, which has been spared the sufferings and misery of wars and civil wars at home for almost a century now? Or shall the yardstick of justice be the desire for atonement, or even for unbounded revenge, as the prosecution would have it, in abuse of Control Council Law No. 10, itself?

Justice is not abstract or absolute. It cannot originate, and it should not, from theoretical constructions alien to life. It must try to do justice to the life and reality in which every one of us stood. In comparison with the unspeakable suffering which has fallen upon so many nations, and especially upon our German people, in comparison with the hundreds of thousands, even millions, of totally innocent people who had to die even after the end of the war, just because they were Germans; the fate that you will mete out to us 21 men may seem of no consequence. It is but a drop in an ocean of sorrow.

And yet, whether you or we so choose or not, your verdict will be a symbol too. There rests upon your shoulders a responsibility which far exceeds the fate of us 21. In these very weeks millions are moved by the fate of men who partly without justification were caught in the much too far-spread network of a vengeance campaign, and who were not accorded and are not to be accorded the chance of the fair trial that we have had. This sympathy and emotion are only meant in part for the men involved; beyond that is the anxious question as to the will of your country to mete out righteousness and justice, of a country that is at the point of taking the fate of the civilized world into its hands.

Your verdict and your opinion to be contained in your judgment will be considered by millions in Germany as a symbol for the will and ability to comprehend the fate and the vicissitudes of life to which other people were exposed, and to respect their patriotism, their national devotion, and their loyalty to their oath.

You, Your Honors, share the responsibility of whether the path can be paved for reconciliation and understanding, or whether retaliation dictated by hatred, intolerance, arrogance, and self-righteousness shall continue to rule. You are in a position to contribute to helping millions of wavering and uprooted people in their anxious desire to once again regain their belief in the ultimate triumph of good and justice in the world. You can help them to tear asunder the fateful chain of hatred and vengeance and give them once more the determination to stand up for what was once cherished by their hearts, starting anew with unblemished hands, with cool minds, and with a forgiving ear.

The responsibility which lies upon you, Your Honors, is one which judges have seldom had. May the blessing of God Almighty rest upon your decisions, and may the all-merciful God forgive our prosecutors, for it is not bestowed upon them to see the truth.

PRESIDING JUDGE CHRISTIANSON: The taking of testimony having been completed and all arguments to be presented before the Tribunal having been heard, we are now at the point where we

must adjourn while the Tribunal prepares its opinion and judgment in this matter. When that task is completed, we will issue a call for a reconvening of the Tribunal in order that that judgment may be rendered. And in this connection we wish to admonish and urge all members of counsel, prosecution and defense, to use every effort in order that all briefs still to be filed are filed as quickly as possible. It will greatly facilitate our work if we can have all matters of that sort before us very soon.

We will now adjourn, to reconvene at the call of the Tribunal.

[Whereupon at 1600 hours, 18 November 1948, a recess was taken until further call of the Tribunal.]

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B. JUDGMENT[1]

INTRODUCTION

On 18 November 1947,[2] an indictment against the above-named defendants was filed with the Secretary General of the United States Military Tribunals at Nuernberg. Generally stated, said indictment, consisting of eight counts, charged the defendants with having committed crimes against peace, war crimes, crimes against humanity, and with having participated in a common plan and conspiracy to commit crimes against peace, all as defined in Control Council Law No. 10, duly enacted by the Allied Control Council on 20 December 1945.

Several, but not all, of the defendants are charged under each of the counts of the indictment. The applicable provisions of Control Council Law No. 10 will hereinafter be referred to and set forth as they relate to each count of the indictment when such counts are reached for discussion and decision.

The indictment was served upon all of the defendants in the German language, more than 30 days before arraignment of the defendants thereunder. On 19 December 1947 the case was assigned to this Tribunal for trial by the Supervisory Committee of Presiding Judges of the United States Military Tribunals in Germany, in conformity with Article V of Military Government Ordinance No. 7, as amended, this Tribunal theretofore having been duly established and constituted, pursuant to said Ordinance No. 7, which ordinance was promulgated by the United States Military Governor of the United States Occupation Zone of Germany on 18 October 1946. The arraignment of the defendants took place on 20 December 1947, at which time all defendants pleaded "Not Guilty" to the charges in the indictment.

Throughout the trial of this case, all of the defendants were represented by German counsel of their own choice. One defendant requested that he also be allowed to retain American counsel to represent him. The request was granted.

The presentation of evidence in the case was commenced on 7 January 1948. Final arguments before the Tribunal were concluded on 18 November 1948. The transcript record of the case consists of 28,085 pages. In addition thereto, the prosecution and

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[1] The judgment was read in open Court on 11–13 April 1949 and is recorded in the mimeographed transcript, pages 28086–28803. Just before the reading of the judgment, Presiding Judge Christianson said "The Tribunal will file the original of such judgment with the Secretary General, and the original copy as filed shall constitute the official judgment record of this case." (Tr. p. 28086.) The judgment as reproduced herein is taken from the record copy filed with the Secretary General.

[2] The indictment was signed by the United States Chief of Counsel for War Crimes on 15 November 1947, but it was not filed until 18 November 1947.

the defense together introduced in evidence 9,067 documentary exhibits, totaling over 39,000 pages. Generally accepted technical rules of evidence were not adhered to during the trial, and any evidence that, in the opinion of the Tribunal, had probative value was admitted when offered by either the prosecution or the defense. This practice was in accord with that followed by the International Military Tribunal, and as subsequently thereto provided in Article VII of the hereinbefore referred to Military Government Ordinance No. 7. In the interest of expedition the Tribunal, following the practice adopted by the International Military Tribunal, appointed court commissioners to assist in taking both oral and documentary evidence, but many of the principal witnesses and all of the defendants who testified were heard before the Tribunal itself.

In order that any relevant documentary defense evidence of which the defendants had knowledge or which they believed existed might be made available to the defense, the Tribunal in response to various defense motions uniformly ordered that the persons or agencies having possession or custody of such evidence make same available to the defense. This was even true with respect to documentary evidence in possession of the prosecution. Moreover, at the request of a number of the defendants, the Tribunal appointed a German research analyst, of the defendants' choice, for the purpose of making a search of files of the former Reich government, located in the Document Center in Berlin, under Allied control. Such research analyst spent many months in Berlin in this search for defense evidence. The same research expert was further authorized by this Tribunal to visit London for the purpose of research in behalf of the defendants and was, in fact, so engaged for a number of weeks with the cooperation of British authorities. Other representatives were likewise authorized to make search of former Reich government files in Berlin.

In arriving at the conclusions hereinafter reached with respect to the charges against the defendants as contained in the indictment, the Tribunal has undeviatingly adhered to the proposition that a defendant is presumed innocent until proved guilty beyond a reasonable doubt.

During the course of the trial, a motion was made in behalf of all defendants charged in count four of the indictment that said count be stricken. The motion was granted and a formal order in the matter made and filed by the Tribunal.*

During the trial from time to time motions were also made in behalf of individual defendants to dismiss counts of the indict-

* The defense motion, the argumentation on the motion, and the Tribunal's order are reproduced in section VIII, Volume XIII, this series.

ment relating to them on the ground that the Tribunal was without jurisdiction to try the defendants on such counts and on the further ground that the evidence adduced by the prosecution was insufficient to sustain the charges. Such motions were denied without prejudice, except in three instances where charges in certain counts of the indictment were dismissed with respect to certain defendants because of a failure of proof. Specific attention to the charges thus dismissed and the defendants affected thereby will be given when the charges involved in such dismissals are reached in the ensuing discussion of the individual counts of the indictment. Like attention will be called to instances wherein the prosecution, during the trial, withdrew certain charges against certain of the defendants.

In the final arguments and briefs of the defendants, the contention that this Tribunal is without jurisdiction in this matter was renewed. In this connection, attention is directed to the fact that a number of United States Military Tribunals of precisely the same type and origin as this one have heretofore had their jurisdiction questioned on similar grounds in the course of their trial of cases involving offenses defined in Control Counsel Law No. 10. (Flick, et al., Case 5; List, et al., Case 7; and Ohlendorf, et al., Case 9.*) The statements made in the judgments of such cases in the course of disposing of the attacks made on the jurisdiction of such Tribunals, we deem to be conclusive answers to the challenge here made to this Tribunal's jurisdiction, and we accordingly reject the contention of the defendants that these proceedings should be dismissed because of the Tribunal's lack of jurisdiction.

The record, including briefs of counsel all of which the Court has considered and examined, amounts to approximately 79,000 pages. The evidence of this case presents a factual story of practically every phase of activity of the Nazi Party and of the Third Reich, whether political, economic, industrial, financial, or military.

Hundreds of captured official documents were offered, received, and considered which were unavailable at the trial before the International Military Tribunal (sometimes herein referred to as the IMT), and which were not offered in any of the previous cases before United States Military Tribunals, and the record here presents, more fully and completely than in any other case, the story of the rise of the Nazi regime, its programs, and its acts.

The Tribunal has had the aid of and here desires to express its appreciation and gratitude for the skill, learning, and meticu-

* Volumes VI, XI, and IV, respectively, this series.

lous care with which counsel for the prosecution and defense have presented their case.

Notwithstanding the provisions in Article X of Ordinance No. 7, that the determination of the International Military Tribunal that invasions, aggressive acts, aggressive wars, crimes, atrocities, and inhumane acts were planned or occurred, shall be binding on the Tribunals established thereunder and cannot be questioned except insofar as the participation therein and knowledge thereof of any particular person may be concerned, we have permitted the defense to offer evidence upon all these matters. In so doing we have not considered this article to be a limitation on the right of the Tribunal to consider any evidence which may lead to a just determination of the facts. If in this we have erred, it is an error which we do not regret, as we are firmly convinced that courts of justice must always remain open to the ascertainment of the truth and that every defendant must be accorded an opportunity to present the facts.

Before considering the questions of law and fact which are here involved, we deem it proper to state the nature of these trials, the basis on which they rest, and the standards by which these defendants should be judged.

These Tribunals were not organized and do not sit for the purpose of wreaking vengeance upon the conquered. Was such the purpose, the power existed to use the firing squad, the scaffold, or the prison camp without taking the time and putting forth labor which have been so freely expended on them, and the Allied Powers would have copied the methods which were too often used during the Third Reich. We may not, in justice, apply to these defendants because they are Germans standards of duty and responsibility which are not equally applicable to the officials of the Allied Powers and to those of all nations. Nor should Germans be convicted for acts or conducts which, if committed by Americans, British, French, or Russians would not subject them to legal trial and conviction. Both care and caution must be exercised not to prescribe or apply a yardstick to these defendants which cannot and should not be applied to others, irrespective of whether they are nationals of the victor or of the vanquished.

The defendants here are charged with violation of international law, and our task is: first, to ascertain and determine what it is; second, whether the defendants have infringed these principles.

International law is not statutory. It is in part defined by and described in treaties and covenants among the powers of the world. Nevertheless, much of it consists of practices, principles, and standards which have become developed over the years and have found general acceptance among the civilized powers of the

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world. It has grown and expanded as the concepts of international right and wrong have grown. It has never been suggested that it has been codified, or that its boundaries have been specifically defined, or that specific sanctions have been prescribed for violations of it. The various Hague and Geneva Conventions, the Constitution and the Charter of the League of Nations, and the Kellogg-Briand treaties have given definitive shape to limited fields of international law. It can be said that insofar as certain acts are prohibited or permitted by these treaties or covenants, a codification exists and specific rules of conduct prescribed. It does not follow however that they are exclusive, and assuredly it cannot be said that they cover or pretend to cover the entire field of international law.

In determining whether the action of a nation is in accordance with or violates international law, resort may be had not only to those treaties and covenants, but to treatises on the subject and to the principles which lie beneath and back of these treaties, covenants, and learned treatises; and we need not hesitate, after having determined what they are, to apply them to new or different situations. It is by this very means that all legal codes, civil or criminal, have developed.

Aggressive wars and invasions.—The question, therefore, is whether or not the London Charter and Control Council Law No. 10 define new offenses or whether they are but definitive statements of preexisting international law. That monarchs and states, at least those who considered themselves civilized, have for centuries recognized that aggressive wars and invasions violated the law of nations is evident from the fact that invariably he who started his troops on the march or his fleets over the seas to wage war has endeavored to explain and justify the act by asserting that there was no desire or intent to infringe upon the lawful rights of the attacked nation or to engage in cold-blooded conquest, but on the contrary that the hostile acts became necessary because of the enemy's disregard of its obligations; that it had violated treaties; that it held provinces or cities which in fact belonged to the attacker; or that it had mistreated or discriminated against his peaceful citizens.

Often these justifications and excuses were offered with cynical disregard of the truth. Nevertheless, it was felt necessary that an excuse and justification be offered for the attack to the end the attacker might not be regarded by other nations as acting in wanton disregard of international duty and responsibility. From Caesar to Hitler the same practice has been followed. It was used by Napoleon, was adopted by Frederick the Great, by Philip II of Spain, by Edward I of England, by Louis XIV of

France, and by the powers who seized lands which they desired to colonize and make their own. Every and all of the attackers followed the same time-worn practice. The white, the blue, the yellow, the black, and the red books had only one purpose, namely, to justify that which was otherwise unjustifiable.

But if aggressive invasions and wars were lawful and did not constitute a breach of international law and duty, why take the trouble to explain and justify? Why inform neutral nations that the war was inevitable and excusable and based on high notions of morality, if aggressive war was not essentially wrong and a breach of international law? The answer to this is obvious. The initiation of wars and invasions with their attendant horror and suffering has for centuries been universally recognized by all civilized nations as wrong, to be resorted to only as a last resort to remedy wrongs already or imminently to be inflicted. We hold that aggressive wars and invasions have, since time immemorial, been a violation of international law, even though specific sanctions were not provided.

The Kellogg-Briand Pact not only recognized that aggressive wars and invasions were in violation of international law, but proceeded to take the next step, namely, to condemn recourse to war (otherwise justifiable for the solution of international controversies), to renounce it as an instrumentality of national policy, and to provide for the settlement of all disputes or conflicts by pacific means. Thus war as a means of enforcing lawful claims and demands became unlawful. The right of self-defense, of course, was naturally preserved, but only because if resistance was not immediately offered, a nation would be overrun and conquered before it could obtain the judgment of any international authority that it was justified in resisting attack.

The preamble of the treaty [General Pact for the Renunciation of War] provides that the nations declare their conviction—

> "* * * that any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty."

Quincy Wright, Professor of International Law, University of Chicago, in January 1933 (American Journal of International Law, vol. 21, No. 1, 23 January 1933), reviewed the Pact and the conclusions put upon, and the implications arising from, its provisions by the leading statesmen of that time. He quotes Secretary Stimson as follows:

> "Under the former concept of international law, when a conflict occurred it was usually deemed the concern only of the parties to the conflict * * *. But now, under the covenant and

the Kellogg-Briand Pact, the conflict becomes of legal concern to everybody connected with the treaty. All steps taken to enforce the treaty must be adjudged by this new situation. As was said by M. Briand, quoting the words of President Coolidge: 'An act of war in any part of the world is an act that injures the interests of my country.'

"The world has learned that great lesson and the execution of the Kellogg-Briand Treaty codified it."

Professor Wright continues—

"Furthermore, the suggestion that the obligation is not legal because it is unprovided with sanctions has carried no more weight. Many treaties have no specific sanctions but insofar as they create obligations under international law, those obligations are covered by the sanctions of all international law * * *.

"In his exposition of the treaty, Secretary Kellogg pointed out 'there can be no question, as a matter of law, that the violation of a multilateral antiwar treaty through resort to war by one party thereto would automatically release the other parties from their obligations to the treaty-breaking states. Any express recognition of this principle of law is wholly unnecessary * * *.'

"These changes in international law consequent upon the existence of war, arise from the following propositions:

"1. A Party to the Pact responsible for initiating a state of war (a primary belligerent) will have violated the rights of all the parties to the Pact and will have lost all title to its benefits from non-participating states as well as from its enemies.

"2. A Party to the Pact involved in a state of war but not responsible for initiating it (a secondary belligerent) will not have violated the Pact and consequently will continue entitled to its benefits not only from nonparticipating states but also from its enemies.

"3. The other Parties to the Pact, nonparticipating in the war or 'partial,' while free to keep out of the war, will have suffered a legal injury through the outbreak of war, and though bound to extend the full benefits of the traditional international law of neutrality as well as the benefits of the Pact to the secondary belligerent will be free to deny these benefits to the primary belligerent."

It is to be noted that these views were expressed long before the seizure of power by Hitler and the Nazi Party, and years before the occurrence of the acts of aggression here charged, and are contemporaneous conclusions regarding the intent, meaning, and scope of the Treaty.

Is there personal responsibility for those who plan, prepare, and initiate aggressive wars and invasions? The defendants have ably and earnestly urged that heads of states and officials thereof cannot be held personally responsible for initiating or waging aggressive wars and invasions because no penalty had been previously prescribed for such acts. History, however, reveals that this view is fallacious. Frederick the Great was summoned by the Imperial Council to appear at Regensburg and answer, under threat of banishment, for his alleged breach of the public peace in invading Saxony.

When Napoleon, in alleged violation of his international agreement, sailed from Elba to regain by force the Imperial Crown of France, the nations of Europe, including many German princes in solemn conclave, denounced him, outlawing him as an enemy and disturber of the peace, mustered their armies, and on the battlefield of Waterloo, enforced their decree, and applied the sentence by banishing him to St. Helena. By these actions they recognized and declared that personal punishment could be properly inflicted upon a head of state who violated an international agreement and resorted to aggressive war.

But even if history furnished no examples, we would have no hesitation in holding that those who prepare, plan, or initiate aggressive invasions, and wage aggressive wars; and those who knowingly participate therein are subject to trial, and if convicted, to punishment.

By the Kellogg-Briand Treaty, Germany as well as practically every other civilized country of the world, renounced war as an instrumentality of governmental policy. The treaty was entered into for the benefit of all. It recognized the fact that once war breaks out, no one can foresee how far or to what extent the flames will spread, and that in this rapidly shrinking world it affects the interest of all.

No one would question the right of any signatory to use its armed forces to halt the violator in his tracks and to rescue the country attacked. Nor would there be any question but that when this was successfully accomplished sanctions could be applied against the guilty nation. Why then can they not be applied to the individuals by whose decisions, cooperation, and implementation the unlawful war or invasion was initiated and waged? Must the punishment always fall on those who were not personally responsible? May the humble citizen who knew nothing of the reasons for his country's action, who may have been utterly deceived by its propaganda, be subject to death or wounds in battle, held as a prisoner of war, see his home destroyed by artillery or from the air, be compelled to see his wife and family suffer

privations and hardships; may the owners and workers in industry see it destroyed, their merchant fleets sunk, the mariners drowned or interned; may indemnities result which must be derived from the taxes paid by the ignorant and the innocent; may all this occur and those who were actually responsible escape?

The only rationale which would sustain the concept that the responsible shall escape while the innocent public suffers, is a result of the old theory that "the King can do no wrong," and that "war is the sport of Kings."

We may point out further that the [Hague and] Geneva Conventions relating to rules of land warfare and the treatment of prisoners of war provide no punishment for the individuals who violate those rules, but it cannot be questioned that he who murders a prisoner of war is liable to punishment.

To permit such immunity is to shroud international law in a mist of unreality. We reject it and hold that those who plan, prepare, initiate, and wage aggressive wars and invasions, and those who knowingly, consciously, and responsibly participate therein violate international law and may be tried, convicted, and punished for their acts.

The "Tu Quoque" Doctrine.—The defendants have offered testimony and supported it by official documents which tend to establish that the Union of Soviet Socialist Republics entered into a treaty with Germany in August 1939, which contains secret clauses whereby not only did Russia consent to Hitler's invasion of Poland, but at least tacitly agreed to send its own armed forces against that nation, and by it could demand and obtain its share of the loot, and was given a free hand to swallow the little Baltic states with whom it had then existing nonaggression treaties. The defense asserts that Russia, being itself an aggressor and an accomplice to Hitler's aggression, was a party and an accomplice to at least one of the aggressions charged in this indictment, namely, that against Poland, and therefore was legally inhibited from signing the London Charter and enacting Control Council Law No. 10, and consequently both the Charter and Law are invalid, and no prosecution can be maintained under them.

The justifications, if any, which the Soviet Union may claim to have had for its actions in this respect were not represented to this Tribunal. But if we assume, *arguendo,* that Russia's action was wholly untenable and its guilt as deep as that of the Third Reich, nevertheless, this cannot in law avail the defendants or lessen the guilt of those of the Third Reich who were themselves responsible. Neither the London Charter nor Control Council Law No. 10 did more than declare existing international law regarding aggressive wars and invasions. The Charter and

Control Council Law No. 10 merely defined what offenses against international law should be the subject of judicial inquiry, formed the International Military Tribunal, and authorized the signatory powers to set up additional tribunals to try those charged with committing crimes against peace, war crimes, and crimes against humanity.

But even if it were true that the London Charter and Control Council Law No. 10 are legislative acts, making that a crime which before was not so recognized, would the defense argument be valid? It has never been suggested that a law duly passed becomes ineffective when it transpires that one of the legislators whose vote enacted it was himself guilty of the same practice or that he himself intended, in the future, to violate the law.

COUNT ONE—CRIMES AGAINST PEACE

The defendants von Weizsaecker, Keppler, Bohle, Woermann, Ritter, von Erdmannsdorff, Veesenmayer, Lammers, Stuckart, Darré, Meissner, Dietrich, Berger, Schellenberg, Schwerin von Krosigk, Koerner, and Pleiger are charged with having participated in the initiation of invasions of other countries and wars of aggression, including but not limited to planning, preparation, initiation, and waging of wars of aggression in violation of international treaties, agreements, and assurances. The invasions and wars referred to and the dates of their initiation are alleged to have been as follows:

Austria	12 March 1938
Czechoslovakia	1 October 1938 and 15 March 1939
Poland	1 September 1939
United Kingdom and France	3 September 1939
Denmark and Norway	9 April 1940
Belgium, Netherlands, and Luxembourg	10 May 1940
Yugoslavia and Greece	6 April 1941
Union of Soviet Socialist Republics	22 June 1941
United States of America	11 December 1941

The prosecution dismissed this count as to the defendants Bohle, von Erdmannsdorff, and Meissner.

Notwithstanding the fact that the International Military Tribunal and several of these Tribunals have decided that the Third Reich was guilty of aggressive wars and invasions, we have reexamined this question because of the claim made by the defense that newly discovered evidence reveals that Germany was not the aggressor. It should be made clear, however, that this defense is not submitted by all of the defendants. For example, the defendant von Weizsaecker freely admits that these acts were aggressions.

The argument is based on the alleged injustices and harsh terms of the Versailles Treaty, which it is claimed was imposed upon Germany by force; that agreements made under duress are not binding, and in attempting to rid itself of the bonds thus thrust upon it, Germany was compelled to use force and in so doing cannot be judged an aggressor. Unless the defense has sufficient legal merit necessitating our so doing, a review of the treaty and the reasons which underlie it and its terms, with a view to determining the accuracy of these claims, would expand our opinion beyond permissible limits. In our opinion, however, there is no substance to the defense, irrespective of the question whether the treaty was just or whether it was imposed by duress.

We deem it unnecessary to determine either the truth of these claims or whether one upon whom the victor by force of arms has imposed a treaty on unjust or unduly harsh terms may therefore reject the treaty and, by force of arms, attempt to regain that which it believes has been wrongfully wrested from it.

If, *arguendo,* both propositions were conceded, nevertheless, both are irrelevant to the question confronting us here. In any event the time must arrive when a given status, irrespective of the means whereby it came into being, must be considered as fixed, at least so far as a resort to an aggressive means of correction is concerned.

When Hitler solemnly informed the world that so far as territorial questions were concerned Germany had no claims, and by means of solemn treaty assured Austria, France, Czechoslovakia, and Poland that he had no territorial demands to be made upon them, and when he entered into treaties of peace and nonaggression with them, the status of repose and fixation was reached. These assurances were given and these treaties entered into when there could be no claim of existing compulsion. Thereafter aggressive acts against the territories of these nations became breaches of international law, prohibited by the provisions of the Kellogg-Briand Treaty to which Germany had become a voluntary signatory.

No German could thereafter look upon war or invasion to recover part or all of the territories of which Germany had been deprived by the Treaty of Versailles as other than aggressive. To excuse aggressive acts after these treaties and assurances took place is merely to assert that no treaty and no assurance by Germany is binding and that the pledged word of Germany is valueless. It is therefore particularly unfortunate both for the present and future of the German people that such a defense should be raised as it tends to create doubt when, if at all, the

nations of the world can place reliance upon German international obligations.

Czechoslovakia.—On 16 October 1929, Germany entered into a treaty with Czechoslovakia, Article I of part 1 of which provides that all disputes of any kind between Germany and Czechoslovakia, which it may not be possible to settle amicably by normal means of diplomacy, should be submitted for decision either to an arbitral tribunal or to a permanent court of international justice, and it was agreed that the disputes referred to include those mentioned in Article XIII of the Covenant of the League of Nations.

On 11 and 12 March 1938 the Hitler government reassured Czechoslovakia that the developments in Austria would in no way have any detrimental influence upon the relations of the German Reich and that state, emphasizing the continued earnest endeavor on the part of Germany to improve those mutual relations. The Czechs were so assured by Goering who gave his "word of honor" and by von Neurath, then Foreign Minister, who officially assured the Czech Minister Mastny, on behalf of Hitler, that Germany still considered herself bound by the German-Czech Arbitration Convention concluded at Locarno in October 1925. Von Mackensen of the Foreign Office gave further assurances that the clarification of the Austrian situation would tend to improve German-Czechoslovakian relations.

Austria.—On 21 May 1935, Germany assured Austria that it neither intended nor wished to intervene in the domestic affairs of that state, or annex, or attach that country to her. On 11 July 1936 Hitler entered into an agreement with Austria containing among other things the provision that the German Government recognized the full sovereignty of the Federal State of Austria and in the sense of the pronouncement of the German Leader and Chancellor of 21 May 1935.

By the Treaty of Versailles, Article 40, Germany acknowledged and agreed to respect strictly the independence of Austria within the boundaries which might be fixed in the treaty between the states and the principal Allied and Associated Powers, and further agreed that this independence should be inalienable except by the consent of the Council of the League of Nations.

Poland.—On 16 October 1925 Germany, at Locarno, entered into a treaty with Poland which recited that the contracting parties were equally resolved to maintain peace between them by assuring the peaceful settlement of differences which might arise between the two countries, and declared that respect for the rights established by treaty or resulting from the law of nations was obligatory for international tribunals, that the rights of a state

could not be modified save with its consent, and that all disputes of every kind between Germany and Poland, which it was not possible to settle amicably by normal methods of diplomacy, should be submitted for decision either to an arbitral tribunal or to an international court of justice.

On 26 January 1934 Germany and Poland signed a nonaggression pact which provided, among other things, that under no circumstances would either party proceed to use force for the purpose of settling disputes.

On 7 March 1936 Hitler announced: "We have no territorial demands to make in Europe." On 20 February 1938 Hitler in a speech said (*2357–PS*):[1]

> "* * * in our relations with the state with which we had had perhaps the greatest differences not only has there been a *detente,* but in the course of years there has been a constant improvement in relations * * *. The Polish state respects the national conditions in this state and both the city of Danzig and Germany respect Polish rights. And so the way to an understanding has been successfully paved, an understanding which, beginning with Danzig, has today in spite of the attempts of many mischief-makers finally succeeded in taking the poison out of the relations of Germany and Poland and transforming them into a sincere and friendly cooperation."

On 26 September 1938, Hitler said (*TC–73* (*42*)):[2]

> "In Poland there ruled not a democracy, but a man, and with him I succeeded in precisely 12 months in coming to an agreement which, for 10 years, to begin with, entirely removed the danger of conflict. We are all convinced that this agreement will bring lasting pacification."

On 24 November 1938 Keitel issued orders based on Hitler's instructions of 21 October that preparations be made to enable German troops to occupy the Free City of Danzig by surprise.

Denmark and Norway.—On 31 May 1939 Germany and Denmark entered into a nonaggression pact in which they agreed that (*TC–24, Pros. Ex. 202*)—

> "* * * in no case * * * [shall either country] resort to war or any other use of force, one against the other."

On 28 August 1939 the defendant von Weizsaecker assured the Danish Minister of Germany's intention to abide by the terms of this pact.

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[1] This document was introduced in evidence in the IMT trial as Exhibit GB–30, and the German text is reproduced in part in Trial of the Major War Criminals, op. cit., volume XXX, pages 285 and following.

[2] This document is reproduced in part in Nazi Conspiracy and Aggression (U.S. Government Printing Office, Washington, 1946), volume VIII, page 482.

On 2 September 1939 Germany assured Norway that in view of the friendly relations existing between them, it would under no circumstances prejudice the inviolability or neutrality of Norway, and on 6 October 1939 Germany again assured Norway that it had never had any conflicts of interest or even points of controversy with the northern states, "and neither has she any today," and that Sweden and Norway had both been offered nonaggression pacts and refused them solely because they did not feel themselves threatened in any way.

Belgium.—On 13 January 1937 Hitler stated that Germany had "and here I repeat, solemnly" given assurances time and again that, for instance, between Germany and France there cannot be any humanly conceivable points of controversy; that the German Government had given the assurance to Belgium and Holland that it was prepared to recognize and guarantee the inviolability of those territories. This was reiterated on 26 August 1939 and was against renewed on 6 October of that year. At that very time, by Hitler's order, the chiefs of the German Army were engaged in planning and preparing the invasions of these countries.

Yugoslavia.—On 28 April 1938 the German Government, through the defendant von Weizsaecker, stated that having become reunited with Austria, it would consider the frontiers of Italy, Yugoslavia, Estonia, Lichtenstein, and Hungary as inviolable, and that the Yugoslavian Government had been informed by authoritative German circles that Germany policy had no aims beyond Austria, and that the Yugoslavian frontier would, in no case, be assaulted. When in September 1939 Heeren, Minister to Yugoslavia, reported that there was increased anxiety there over Germany's military intentions and requested that some kind of announcement be made to alleviate local fears, the defendant von Weizsaecker replied that in view of Hitler's recent speech dcelaring that Germany's boundaries to the west and south were final, it would not appear necessary to say more unless new occasions for reissuing reassuring communiques to Yugoslavia should arise.

On 6 October 1939 Hitler gave Yugoslavia the following assurance (*TC–43, Pros. Ex. 262*):

> "After the completion of the Anschluss I informed Yugoslavia that from now on the boundaries with this country would also be an inviolable one, and that we only desire to live in friendship and peace with her."

What reliance could be placed on German pledges is revealed by the minutes of the Hitler-Ciano meeting of 12 August 1939 where Hitler stated (*1871–PS, Pros. Ex. 260*):

"Generally speaking, it would be best to liquidate the pseudo-neutrals, one after another. This is fairly easily done if the Axis partner protects the rear of the other who is just finishing off one of the uncertain neutrals and vice versa. Italy might consider Yugoslavia such an uncertain neutral."

Russia.—On 23 August 1939 Germany entered into a nonaggression treaty with Russia, providing for arbitral commissions in case of any dispute, and on the same day entered into a secret protocol with the Soviet Union that in the event of a territorial and political rearrangement in the areas belonging to Latvia, Estonia, and Lithuania, the northern boundaries of Lithuania should represent the boundaries of spheres of influence between Germany and Russia, and that the spheres of Germany and Russia in Poland should be bound by the rivers Narew, Vistula, and San, and declared Germany's complete political disinterest in the Soviet claims in Bessarabia.

On 28 September 1939 Germany and the Soviet Union entered into a boundary and friendship agreement which divided Poland between them and fixed their mutual boundaries, and on the same date entered in a secret supplementary protocol which amended that of 23 August putting the Lithuanian state within the sphere of Soviet influence and Lublin and parts of Warsaw in the German sphere.

On the same day the two nations entered into a further agreement declaring that Germany and Russia would direct their common efforts jointly, and with other friendly powers if occasion arises, toward putting an end to the war between Germany and England and France, and that if these efforts remained fruitless, this failure would demonstrate the fact that England and France were responsible for the conditions of the war, and Germany and Russia would engage in mutual consultations with regard to necessary measures.

Such were the treaties. Nevertheless, as was found by the International Military Tribunal, as early as the late summer of 1940 Germany began to make preparations for an attack on the Soviets in spite of the nonaggression pact.

The German Ambassador in Moscow reported that the Soviet Union would go to war only if attacked. Russia had fulfilled not only its obligations under the political treaty, but those arising out of the commercial treaty.

The claim now made that Russia intended to attack Germany is without foundation. It expressed concern over the large German troop concentrations in Rumania which were of such size that the German explanation that they were intended to prevent the British from establishing a Salonikian front was obviously

false, but there is no substantial evidence that Russia intended to attack Germany; its concern was that it might become the attacked.

In addition to all speeches, assurances, and treaties Germany had signed the Kellogg-Briand Pact, which not only prescribed aggressive wars between nations, but abandoned war as an instrument of governmental policy and substituted conciliation and arbitration for it. One of its most important and far-reaching provisions was that it implicitly authorized the other nations of the world to take such measures as they might deem proper or necessary to punish the transgressor. In short, it placed the aggressor outside the society of nations. The Kellogg-Briand Pact, however, did not attempt to either prohibit or limit the right of self-defense, but it is implicit, both in its word and spirit, that he who violates the treaty is subject to disciplinary action on the part of the other signatories and that he who initiates aggressive war loses the right to claim self-defense against those who seek to enforce the Treaty. This was merely the embodiment in international law of a long-established principle of criminal law:* "* * * there can be no self-defense against self-defense."

The indictment charges that German aggression started with the forcible annexation of Austria. It is not urged that this action arose because of any fear of aggression by that state, or that it had planned or proposed to join any other state in any aggressive action against Germany. That Hitler planned to seize both Austria and Czechoslovakia without regard to the wishes of those people is clear from his statements made at the famous secret conferences of 5 November 1937 and 23 November 1939.

The Austro-Hungarian Empire was dissolved at the end of the First World War, and by the Treaty of Versailles [St. Germain] Austria became an independent and sovereign state. At that time, and at least during most of the time of the Weimar Republic, there was a strong desire on the part of Austria to join Germany.

Notwithstanding attempts to conceal ultimate objectives and palpable deceptive disclaimers by official Germany and by the Nazi Party of any desire to interfere in Austrian affairs, it became obvious that by fair means or foul the Hitler regime intended and proceeded to subsidize, direct, and control the Austrian members of the Party, and that these efforts were directed toward the annexation of the country. No agreement was made which was not violated; none were made with any intention to

* Wharton's Criminal Law (12th Edition, Lawyer's Cooperative Publishing Company, Rochester, N. Y., 1932), volume I, page 180.

abide by them; and the same technique of propaganda, coercion, and violence was followed in Austria which had been successful in Germany. In the latter stages when it was felt that the plum was ripe and about to fall, and when the possible intervention of other powers still existed, a purported repudiation of Austrian radicals was put forth, not because of disapproval of what they were doing, but to camouflage the program.

While it is now asserted that an overwhelming majority of Austrians accepted and were enraptured by the Anschluss, neither Hitler nor his crew could contain themselves to await what they now term was the inevitable, nor run the hazard of a plebiscite, but Seyss-Inquart was forced on Schuschnigg and made Minister of the Interior where he could control the police, and finally an ultimatum was served on the Austrian Government, and the troops marched in. But before a German soldier crossed the border, armed bands of National Socialist SA and SS units under German control and orders and leaders had taken possession of the city of Vienna, seized the reins of government, and ousted the leaders of the Austrian state and placed them under guard.

In view of the size of the German Army, the disproportion in manpower and military resources, no hope of successful resistance existed. Austria fell without a struggle and the Anschluss was accomplished. It was followed by the proscription, persecution, and internement in concentration camps of those who had resisted the Nazi movement, and the policy there pursued was identical with those which had followed the seizure of power in Germany.

That the invasion was aggressive and that Hitler followed a campaign of deceit, threats, and coercion is beyond question. The whole story is one of duplicity and overwhelming force. It was a part of a program declared to his own circle, and was the first step in the well-conceived and carefully planned campaign of aggression; Austria first, Czechoslovakia second, and Poland third, while visions of the further aggressive aggrandizement were dangled before the eyes of the German leaders. Neither these acts nor the invasion by German armed forces can be said to be pacific means or a peaceful and orderly process within the meaning of the preamble of the Kellogg-Briand Pact, and violated both its letter and spirit.

It must be borne in mind that the term "invasion" connotes and implies the use of force. In the instant cases the force used was military force. In the course of construction of this definition, we certainly may consider the word "invasion" in its usually accepted sense. We may assume that the enacting author-

ıties also used the term in a like sense. In Webster's Unabridged Dictionary, we find the following definition of invasion:

"Invasion.—1. Act of invading, especially a warlike or hostile entrance into the possessions or domains of another; the incursion of an army for conquest or plunder."

The evidence with respect to both Austria and Czechoslovakia indicates that the invasions were hostile and aggressive. An invasion of this character is clearly such an act of war as is tantamount to, and may be treated as, a declaration of war. It is not reasonable to assume that an act of war, in the nature of an invasion, whereby conquest and plunder are achieved without resistance, is to be given more favorable consideration than a similar invasion which may have met with some military resistance. The fact that the aggressor was here able to so overawe the invaded countries, does not detract in the slightest from the enormity of the aggression, in reality perpetrated. The invader here employed an act of war. This act of war was an instrument of national policy. Tribunal V in Case 12 (the High Command case)* in the course of its judgment said:

"As a preliminary to that we deem it necessary to give a brief consideration to the nature and characteristics of war. We need not attempt a definition that is all inclusive and all exclusive. It is sufficient to say that war is the exerting of violence by one state or politically organized body, against another. In other words, it is the implementation of a political policy by means of violence. Wars are contests by force between political units but the policy that brings about their initiation is made and the actual waging of them is done by individuals. What we have said thus far is equally applicable to a just as to an unjust war, to the initiation of an aggressive and, therefore, criminal war, as to the waging of defensive and, therefore, legitimate war against criminal aggression. The point we stress is that war activity is the implementation of a predetermined national policy.

"Likewise, an invasion of one state by another is the implementation of the national policy of the invading state by force even though the invaded state, due to fear or a sense of the futility of resistance in the face of superior force, adopts a policy of non-resistance and thus prevents the occurrence of any actual combat." [Emphasis added.]

We hold that the invasion of Austria was aggressive and a crime against peace within the meaning of Control Council Law No. 10.

* United States *vs.* Wilhelm von Leeb, et al., Volumes X and XI, this series.

We have already quoted Hitler's words as to his plans regarding the Czechoslovakian state. The objectives were fixed but the tactics of accomplishment were elastic and depended upon the necessities and conveniences of time and circumstance. This was no more than the distinction between military strategy and tactics. Strategy is the over-all plan which does not vary. Tactics are the techniques of action which adjust themselves to the circumstances of weather, terrain, supply, and resistance. The Nazi plans to destroy the Czech state remained constant. But where, when, and how to strike depended upon circumstances as they arose.

The evidence establishes beyond all question or doubt that Germany, under Hitler, never made a promise which it intended to keep, that it promised anything and everything whenever it thought promises would lull suspicion, and promised peace on the eve of initiating war.

When in 1938 Germany invaded Austria it was in no danger from that state or its neighbors. When it had swallowed the Austrian Federal State, Germany moved against Czechoslovakia, using the question of the Sudeten Germans as a mere excuse for its demands at Munich. It completed its organization of and assumed even greater control over Henlein and his party, which it had secretly organized and subsidized, and directed him to reject any Czech efforts of composition and compromise and to constantly increase his demands.

At Munich it put forth demands for the annexation of the Sudetenland when theretofore it had not suggested it. Its Foreign Office had instructed its representatives to inform Lord Runciman that unless his report regarding the Sudeten question was favorable to the German wishes, dire international results would follow. After Munich it promised and declared that it had no further ideas of aggression against the remnants of the Czech state when, at the very moment, those plans were in existence, and were ready to be matured. It fomented, subsidized, and supported the Slovakian movement for independence in the face of its assurance of friendship with the Czechs. When Tiso seemed to hesitate, Hitler made it clear that unless this action was taken he would lose interest in the Slovakians. He summoned the aged and ill Hacha to Berlin and threatened his country with war and the destruction of its ancient capital, Prague, by aerial warfare. He started his armed forces on the march into Bohemia and Moravia before he had coerced Hacha into submission.

The announcement that its relations with Poland were excellent and that peace was assured came when plans for the invasion of Poland were already decided upon. It made nonaggression

pacts, gave assurances to Denmark and Norway, at a time when the question of occupying these countries for the purpose of obtaining bases was being considered. It assured Holland, Belgium, and Luxembourg that it would respect their neutrality when it had already planned to violate it and only awaited a propitious moment so to do.

When Germany fomented and subsidized the Henlein Sudeten movement, it knew that Czechoslovakia desired peace and not war. It used the technique of agent provocateur, both in Czechoslovakia and again in Poland, to create incidents upon which it could seize as an excuse for military action.

Hitler's aggression against Russia was not induced by fear of attack, but because Russia had material resources for which Hitler hankered. How, at that time, any country could have had the slightest faith in Germany's word is beyond comprehension.

The record is one of abyssmal duplicity which carried in its train death, suffering, and loss to practically every people in the world; it brought ruin to Germany and a world-wide distrust in the ability of its people to govern themselves as a peace-loving and useful nation. Because of this record the road back is long and arduous and beset with difficulty.

The attempt, which had been made to create the fiction and fable that the Third Reich acted in self-defense and was justified in its acts toward its neighbors, has no foundation and is, in fact, a disservice to the German people. We believe it is an effort to lay the ground work for a resurgence of the ideology which brought untold suffering to the world and ruin to the German nation.

Until the seizure of power, the Western World, on the whole, looked with sympathy and satisfaction on the efforts of the German people to regain the place in the family of nations to which it was entitled, and which it had lost. They suspected, even if they did not know, that Germany, from the very day that it signed the Versailles Treaty, had secretly violated its terms as to disarmament. But while suspicion of Germany's good faith existed in some circles, a strong hope and faith prevailed that the German nation would achieve a free and prosperous society.

It was the Nazi regime and its ready acceptance by the German people which brought the world to arms in defense against an ideology and a dictator whose programs and aims knew no bounds.

After having relied upon Germany's pledge at Munich and found it worthless, having observed the increasing demands upon and its intransigence toward Poland, it is not surprising that France and England found it necessary to enter into a treaty

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of assistance with Poland, and there is neither fact nor substance to the contention that that treaty gave Poland a blank check. Germany was so informed by France and England, as were the Poles.

No justification can, or has been, offered for the invasion of Denmark, other than the pseudo one of military necessity. The Danes had maintained their neutrality and had given no offense to Germany. It was helpless and resistance hopeless as the gallant but futile resistance of the Palace Guards indicated. But as we shall hereafter discuss, military necessity is never available to an aggressor as a defense for invading the rights of a neutral.

Norway.—The defense insists that the invasion of Norway was justified because of French and British plans to land expeditionary forces there, in violation of Norwegian neutrality, and, therefore, Germany acted in self-defense. We may repeat the statement that having initiated aggressive wars, which brought England and France to the aid of the Poles, Germany forfeited the right to claim self-defense, but there are other and cogent facts which make this defense unavailable.

Long before the discovery of alleged British and French plans, and before any such plans existed, the Third Reich commenced to support and subsidize Quisling and his movement for the purpose of gaining control of the Norwegian Government and therefore of Norway. It made no inquiry whether Norway could or would protect its neutrality against Britain and France, and the German official documents disclose that it avoided such an approach and kept its plans secret because of the fear that the other neutral powers would intervene and institute discussions directed toward maintaining Norwegian neutrality and preventing that country from becoming a theatre of war. Finally the desirability of obtaining air and other bases in Norway was a motivating factor for the invasion and this was pointed out by Raeder and Doenitz as early as 3 October 1939.

We hold that the invasion of Norway was aggressive, that the war which Germany initiated and waged there was without lawful justification or excuse and is a crime under international law and Control Council Law No. 10.

Luxembourg.—No justification or excuse is offered regarding the invasion of Luxembourg other than military convenience. No claim is made that Luxembourg had in any way violated its neutrality. In fact, it had not. The German invasion was aggressive, without legal justification or excuse.

Belgium and the Netherlands.—That both of these nations were pathetically eager to avoid being drawn into the holocaust is established beyond doubt. That they had every reason to be dis-

trustful of Germany's word is equally clear. The testimony offered by the defense discloses that when the Third Reich assured the Low Countries that it intended to, and would, observe its treaty obligations and had no hostile intentions, the intention to invade had already been determined upon and was only awaiting a favorable moment.

An attempt has been made to assert that the invasion of Belgium was justified because of conversations between the French and Belgian military staffs. The Belgian Government had been apprehensive for many months that Germany would use its territory as a means to attack the French flank. German preparations to invade Belgium had been matured long since and were hardly a secret. Belgium was properly concerned regarding her defense and possible aid if she were invaded, and her conversations with the French and English were addressed to this alone. Hitler's attack was without justification or excuse and constituted a crime against peace. As to Holland, there is even less ground for justification and excuse.

Yugoslavia and Greece.—Germany's Axis partner, Italy, initiated an aggressive attack against Greece which the defense does not attempt to justify, but asserts that this was undertaken without previous consultations or agreement with Hitler. This appears to be true. But Germany had been advised by its representatives in Rome of the imminence of the attack and its Foreign Office knew of Greek apprehensions regarding the same, and it intentionally displayed alleged ignorance and refused to take any action to prevent it. The German excuse for the attack on Greece is that England had landed certain troop elements in aid of Greece's defense against Italy and that as a matter of self-defense Germany was compelled to intervene, but an aggressor may not loose the dogs of war and thereafter plead self-defense.

The only justification offered for the German invasion of Yugoslavia is the *coup d'état* which overthrew the government which had signed the Anti-Comintern Pact, and the fear that Yugoslavia would remain neutral only until such time as it might join the ranks of Germany's enemies.

The unquestioned fact is that every country, and particularly those which lay along or near German boundaries, was fully aware that German actions in Austria, Czechoslovakia, and Poland were aggressive and unjustified, and that in attacking and invading, Hitler had broken not only the provisions of the Kellogg-Briand Pact, but the pledges which he had given to those countries; each fully disapproved of Germany's action and the question which lay in their minds was where the next blow would fall. We think there is no doubt whatsoever that every country in Europe, except

its Axis partners, hoped for German defeat as the one insurance for its own safety, but such hopes cannot justify the German action against them.

The claim of self-defense is without merit. That doctrine is never available either to individuals or nations who are aggressors. The robber or the murderer cannot claim self-defense, in attacking the police to avoid arrest or those who, he fears, disapprove of his criminal conduct and hope that he will be apprehended and brought to justice.

The invasion of Austria, the invasion of Bohemia and Moravia, and the attack on Poland were in violation of international law and in each case, by resorting to armed force, Germany violated the Kellogg-Briand Pact. It thereby became an international outlaw and every peaceable nation had the right to oppose it without itself becoming an aggressor, to help the attacked and join with those who had previously come to the aid of the victim. The doctrine of self-defense and military necessity was never available to Germany as a matter of international law, in view of its prior violations of that law.

United States of America.—That the United States abandoned a neutral attitude toward Germany long before Germany declared war is without question. It hoped for Germany's defeat, gave aid and support to Great Britain and to the governments of the countries which Germany had overrun. Its entire course of conduct for over a year before 11 December 1941 was wholly inconsistent with neutrality and that it had no intention of permitting Germany's victory, even though this led to hostilities, became increasingly apparent. However, in so doing, the United States did not become an aggressor; it was acting within its international rights in hampering and hindering with the intention of insuring the defeat of the nation which had wrongfully, without excuse, and in violation of its treaties and obligations embarked on a coldly calculated program of aggression and war. But such intent, purpose, and action does not remove the aggressive character of the German declaration of war of 11 December 1941.

A nation which engages in aggressive war invites the other nations of the world to take measures, including force, to halt the invasion and to punish the aggressor, and if by reason thereof the aggressor declares war on a third nation, the original aggression carries over and gives the character of aggression to the second and succeeding wars.

We hold that the invasions and wars described in paragraph two of the indictment against Austria, Czechoslovakia, Poland, the United Kingdom and France, Denmark and Norway, Belgium, the Netherlands, and Luxembourg, Yugoslavia and Greece,

the Union of Soviet Socialist Republics, and the United States of America were unlawful and aggressive, violated international law, and were crimes within the definition of the London Charter and Control Council Law No. 10.

Our task is to determine which, if any, of the defendants, knowing there was an intent to so initiate and wage aggressive war, consciously participated in either plans, preparations, initiations of those wars, or so knowing, participated or aided in carrying them on. Obviously, no man may be condemned for fighting in what he believes is the defense of his native land, even though his belief be mistaken. Nor can he be expected to undertake an independent investigation to determine whether or not the cause for which he fights is the result of an aggressive act of his own government. One can be guilty only where knowledge of aggression in fact exists, and it is not sufficient that he have suspicions that the war is aggressive.

Any other test of guilt would involve a standard of conduct both impracticable and unjust.

Criminal responsibility.—Article II, paragraph 2, of Control Council Law No. 10, provides that—

> "Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (*a*) a principal or (*b*) was an accessory to the commission of any such crime or ordered or abetted the same or (*c*) took a consenting part therein * * *."

Therefore, all those who were either principals or accessories before or after the fact, are criminally responsible, although the degree of criminal responsibility may vary in accordance with the nature of his acts.

Under the provisions of paragraph 4 (*b*), Article II—

> "The fact that any person acted pursuant to the order of his government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation."

In the realm of the ordinary criminal law, one who conceals the fact that a crime has been committed or gives false testimony as to the facts for the purpose of giving some advantage to the perpetrator, not on account of fear but for the sake of an advantage to the accused, is an accessory after the fact. Under English criminal law, one who destroys or suppresses evidence of a crime or manufactures evidence tending to prove the felon's innocence is likewise an accessory after the fact.*

* American Jurisprudence (Bancroft-Whitney Co., San Francisco, Calif., Lawyers' Cooperative Publishing Co., Rochester, N. Y., 1938), Criminal Law, volume 14, paragraphs 103 and 104, pages 837 and 838.

Applying these principles to international criminal law, we hold that one who is under duty to speak the truth and who conceals the fact that a crime has been committed, or destroys, or suppresses evidence regarding it, or who manufactures evidence tending to prove his government's innocence, is an accessory within the meaning of paragraph 2, Article II, of Control Council Law No. 10.

It must be apparent to everyone that the many diverse, elaborate, and complex Nazi programs of aggression and exploitation were not self-executing, but their success was dependent in a large measure upon the devotion and skill of men holding positions of authority in the various departments of the Reich government charged with the administration or execution of such programs.

In discussing whether or not the Reich Cabinet was a criminal organization within the meaning of the London Charter, the International Military Tribunal said:[1]

> "The Tribunal is of the opinion that no declaration of criminality should be made with respect to the Reich Cabinet for two reasons:
>
> "(1) Because it is not shown that after 1937 it ever really acted as a group or organization;
>
> "(2) Because the group of persons here charged is so small that members could be conveniently tried in proper cases without resort to a declaration that the Cabinet of which they were members was criminal. * * *
>
> "It will be remembered that when Hitler disclosed his aims of criminal aggression at the Hossbach Conference, the disclosure was not made before the Cabinet and that the Cabinet was not consulted with regard to it, but, on the contrary, it was made secretly to a small group upon whom Hitler would necessarily rely in carrying on the war.
>
> "It does appear, however, that various laws authorizing acts which were criminal under the Charter were circulated among the members of the Reich Cabinet and issued under its authority signed by the members whose departments were concerned."

The principles there stated are equally applicable to the defendants here who were members of the Cabinet and to those defendants who occupied positions of responsibility and power in the various ministries.

We concur in and shall apply the following principles laid down by the International Military Tribunal:[2]

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[1] Trial of the Major War Criminals, op. cit., volume I, pages 275 and 276.

[2] *Ibid.*, p. 226.

"A plan in the execution of which a number of persons participate is still a plan, even though conceived by only one of them; and those who execute the plan do not avoid responsibility by showing that they acted under the direction of the man who conceived it. Hitler could not make aggressive war by himself. He had to have the cooperation of statesmen, military leaders, diplomats, and businessmen. When they, with knowledge of his aims, gave him their cooperation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent because Hitler made use of them, if they knew what they were doing. That they were assigned to their tasks by a dictator does not absolve them from responsibility for their acts. The relation of leader and follower does not preclude responsibility here any more than it does in the comparable tyranny of organized domestic crime."

While we hold that knowledge that Hitler's wars and invasions were aggressive is an essential element of guilt under count one of the indictment, a very different situation arises with respect to counts three, five, six, and seven, which deal with war crimes and crimes against humanity. He who knowingly joined or implemented, aided, or abetted in their commission as principal or accessory cannot be heard to say that he did not know the acts in question were criminal. Measures which result in murder, ill-treatment, enslavement, and other inhumane acts perpetrated on prisoners of war, deportation, extermination, enslavement, and persecution on political, racial, and religious grounds, and plunder and spoliation of public and private property are acts which shock the conscience of every decent man. These are criminals *per se*.

We have considered the claims made by certain of the defendants that they carried on certain activities because of coercion and duress, and that therefore they were forced to act as they did and could not resign or otherwise avoid compliance with the criminal program. It may be true that they could not have continued to hold office if they did not so comply, or that offers of resignation were not accepted, but, as the defendant Schwerin von Krosigk admits, there were other ways available to them by which they could have been relieved from continuing in their course. None of their superiors would have continued them in office had it constantly appeared that they disapproved of or objected to the commission of these criminal programs, and therefore displayed a lack of cooperation. The fact is, that for varying reasons each said as little as he could, and when he expressed dissent, did so in words which were as soft and innocuous as he could find.

We find that none of the defendants acted under coercion or duress.

VON WEIZSAECKER

The defendant Ernst von Weizsaecker entered the Foreign Office in 1920 and after serving in various capacities there and abroad was appointed Ministerial Director of the Political Division in 1937, and State Secretary in April 1938, serving in that capacity until the spring of 1943, when he was appointed German Ambassador to the Vatican.

As State Secretary he was second only to the Foreign Minister, von Ribbentrop. All divisions of the Foreign Office were subordinate to him. His relations to von Ribbentrop were never close, and gradually deteriorated. Through him and his office all the activities of the Foreign Office were channeled, and all divisions were bound to report to him and in theory and generally in practice received instructions from him. As his relations with von Ribbentrop cooled, occasions arose when the latter gave direct instructions to ministers and ambassadors abroad, and in some instances to divisions of the Foreign Office, without first consulting or informing him, but generally that was not the case.

Although the defendant von Weizsaecker was not present at the conferences where Hitler announced his plans of aggression, he became familiar with them from reliable sources, that is, von Ribbentrop, Canaris, leading generals of the Wehrmacht, and others who furnished him with accurate information. He was neither deceived nor misled concerning the program, although in certain instances he may not have been fully advised of the actually scheduled timetable. He makes no question about this. That to the outside world and to his chief, the Foreign Minister, he wore the face of a willing and earnest collaborator, or at least a consenting one in many instances, he likewise concedes. The documents which he signed or initialed, the conferences which he had with foreign diplomats, the directions which he gave to his subordinates and to the German diplomatic missions abroad, are more than sufficient, unless otherwise explained, not only to warrant, but to compel a judgment of guilty.

His defense is that, although appearing to collaborate, he was continuously engaged in endeavoring to sabotage it and was an active member of the resistance movement; that he never sympathized with, or approved of, the Party movement or of the Hitler program, and that when it became clear to him that the foreign policy of Hitler and von Ribbentrop entailed the danger of war, and that when he became informed that Hitler intended to use aggressive wars and invasions as a means to carry out his political plans, he became active in plots and plans to remove him from power by means of a Putsch to be engineered and executed by

those chiefs of the army who held the same convictions as did he. That the men thus involved included, among others, Generals Beck and Halder, Admiral Canaris, Colonel Oster, and others; that he was convinced that the policies of Hitler and von Ribbentrop entailed, as they did in fact, death, disaster, and destruction to the German people and the ruin of his Fatherland; and that his loyalty to both required him to use these methods for the salvation of all that he felt dear.

The defense that things are not what they seem, and that one gave lip service but was secretly engaged in rendering even this service ineffective; that, in saying "yes," one meant "no," is a defense readily available to the most guilty and is not novel either here or in other jurisdictions. Such a defense must be regarded with suspicion and accepted with caution, and then only when fully corroborated. The exceeding caution observed by the defendant on cross-examination and his claims of lack of recollection of events of importance, which by no stretch of the imagination could be deemed routine, his insistence that he be confronted with documents before testifying about such incidents, were not calculated to create an impression of frankness and candor. His failure to suggest at his interrogations that he was a member of the resistance movement and therefore was opposed to aggression and to the Nazi regime when it must have occurred to him, as it would to any innocent man, that such a statement, particularly if it was corroborated, would have disarmed those who might otherwise be in doubt of his guilt is difficult to understand.

However, these instances alone do not justify us in casting aside the defense. It must be carefully considered, even though this consideration be accompanied with caution and even suspicion. A man is presumed to intend the natural consequences of his own deliberate acts, but this presumption fails if the evidence establishes that the contrary is true.

We recognize that, in the Third Reich, conditions which surround individuals in a free and democratic society did not exist, and that he who plotted against the dictator could not wear his heart upon his sleeve nor leave a trail which could be readily followed. We therefore proceed to analyze the defendant's claims, check them against his acts, to evaluate the testimony offered upon his behalf in the hope thereby to unravel the tangled skein and ascertain the truth.

We reject the claim that good intentions render innocent that which is otherwise criminal, and which asserts that one may with impunity commit serious crimes, because he hopes thereby to prevent others, or that general benevolence toward individuals

is a cloak or justification for participation in crimes against the unknown many.

Planning, preparing, initiating, or waging aggressive war with its attendant horror, suffering, and loss is a crime which stands at the pinnacle of criminality. For it there is no justification or excuse.

We shall deal with the charges of aggressive invasions and wars in the order set forth in the indictment.

Austria.—The prosecution relies upon the following evidence:

(1) That von Weizsaecker was chief of the German delegation to the mixed commission appointed on the basis of the German-Austrian Agreement of 11 July 1936.

(2) That the defendant Keppler maintained contact with the Foreign Office, hoping thereby to eliminate differences of opinion, and that von Weizsaecker, as chief of the Political Division, carried the responsibility for coordination of Foreign Office diplomatic activities with the general plans of aggression.

(3) That Keppler on several occasions talked with von Weizsaecker, his subordinate Altenburg, and von Neurath; that these conferences in particular cloaked a clandestine meeting between members of the German delegation and leaders of the Party in Austria, particularly Captain Leopold.

(4) That von Weizsaecker's section received Keppler's letter stating that Seyss-Inquart would not undertake any obligations relative to Austrian status without the previous contact and agreement with Hitler and the German Foreign Office.

(5) That von Weizsaecker's Referent, Altenburg, prepared a memorandum for von Ribbentrop, then the newly appointed Foreign Minister, in which it was said:

> "The primary requirements for a satisfactory result of the conference in progress should be the close cooperation between the men empowered by the Reich to carry on negotiations and the exponents of the movement in Austria in order to prevent Schuschnigg from playing off the Reich against the movement in Austria, and vice versa."

(6) That the Foreign Office from October 1937 defrayed one-half of his monthly propaganda expenses incurred by Mergle of the NSDAP in Austria.

(7) That von Weizsaecker was aware in February 1938 that large quantities of National Socialist propaganda material were being shipped illegally into Austria from Germany.

(8) That von Weizsaecker knew of von Neurath's diplomatic justification for the invasion of Austria which was issued on or about 12 March 1938.

(9) That von Weizsaecker wrote a preface to the Foreign Office Year Book for 1938 in which he stated that that year would always have a special rank in German history as the year of the reunion with Austria, and that it was good to remember that in politics nothing is accomplished by mere chance.

These claims however do not establish guilt. The offense is the planning, preparation, and initiation of aggressive invasions. That such an invasion took place as the result of planning, etc., is perfectly clear, but unless the defendant participated in them, he committed no offense under international law, and certainly not the one here charged.

In the absence of treaty obligations one may encourage political movements in another state, consort with the leaders of such movements, and give them financial or other support, all for the purpose of strengthening the movement which has an annexation as its ultimate purpose without violating international law. It is only when these things are done with knowledge that they are a part of a scheme to use force and to be followed, if necessary, by aggressive war or invasion that an offense cognizable by this Tribunal comes into being. There is no evidence that von Weizsaecker at the time knew that Hitler intended to invade Austria. We think it may be fairly said that until the latter stages of the incident Hitler felt that his objectives could be attained by means other than invasion by the German armed forces; his own statements clearly show that if he could not do so he fully intended to use force. If, however, this was not known to von Weizsaecker at the time he acted, he committed no offense irrespective of how one may view the morality of the remainder of the program. This Tribunal has jurisdiction over certain specified crimes, and has none over questions of morality not involved in those offenses.

The evidence does not establish von Weizsaecker's guilt in connection with the invasion of Austria.

The Sudetenland, Munich.—While the tactics pursued by Hitler and von Ribbentrop in the months before and during the Munich conference were those of the threatening bully and highwayman, they were effective, and England and France in an attempt to avoid a general European war supinely submitted. The pact was signed and Czechoslovakia was left helpless and therefore acquiesced in the resultant annexation of the Sudetenland. There was no invasion and no war. Germany's possession of the Sudetenland was the result of an international agreement. That Hitler had no intention to abide by it and that his assurances to England, France, and Czechoslovakia that this was the end of his territorial aims were false, there can be no doubt. This is estab-

lished by his own words at the conference of 5 November 1937, recorded by Lieutenant Colonel Hossbach and reiterated at the meeting of 23 November 1939. But von Weizsaecker was not present at either of these conferences and there is no evidence that he was presently informed of the plans announced by Hitler at the first of these meetings.

That he continuously discouraged von Ribbentrop's penchant for aggressive war, endeavored to dissuade him from embarking on a campaign which might involve aggressive war, is shown from the memorandum which he submitted on 21 July 1938 and again on 19 August of that year.

In the first, in answer to von Ribbentrop's boast that if necessary Germany would allow a major war with the Western Powers to break out and would win it, and that the French could be decisively crushed in a major engagement with Germany, that Germany was equipped with enough raw materials and that Goering was directing aircraft construction in such a way that Germany was superior to any enemy, von Weizsaecker said (*Weizsaecker 346, Weizsaecker Ex. 56*):

> "I remarked that to outsiders one must talk in such a manner as to convince them. I said that even when it was our task to fool foreign countries, it was our duty not to fool ourselves. I did not believe that we should win this war. It was a basic truth that one could only conquer a country if one either occupied it or starved it out. To want to do this with airplanes was a Utopian dream; so I did not understand how we could win the war, nor did I believe in our powers of endurance."

In a memorandum of 13 August 1938, von Ribbentrop explained to von Weizsaecker that Hitler was firmly resolved to settle the Czech affair by force of arms and had said that on account of flying conditions the middle of October was the latest possible date, that the other powers would definitely do nothing about it, and if they did, Germany would take them on as well and win. Von Weizsaecker then records his views as follows (*Weizsaecker 346, Weizsaecker Ex. 56*):

> "I again opposed this whole theory and observed that we should have to await political developments until the English lost interest in the Czech matter and would tolerate our action before we could tackle the affair without undue risk. Mr. von Ribbentrop wanted to put the question of responsibility in such a way that I was responsible to him, he only to the Fuehrer, and the Fuehrer alone to the German nation, whereas I maintained that one's way of thinking had to be based on such an ideology in order to carry it out to the best advantage.

Mr. von Ribbentrop said that the Fuehrer had not yet been wrong, and that his most difficult decisions and acts on behalf of the Rhineland were already behind him and one must believe in his genius as he, Ribbentrop, did from long years of experience. If I had not yet come to the point of blind faith in this matter * * * he urged me amicably to do so. He said I would certainly regret it later, if I did not do so and if this fact were later to speak against me."

At the end of August 1938, von Weizsaecker prepared a "strictly secret" report in which he said (*Weizsaecker 355, Weizsaecker Ex. 58*) :

"The next few weeks will see the growth of the Czechoslovakian question from a local crisis into a European one. The great European powers will then show their alignment more clearly in the diplomatic as well as the military spheres. Soon there won't be any more room for doubt that in case of an invasion of Czechoslovakia Germany would be faced with the Western Powers as opponents. In view of this situation, the leading lights of German policy have got to review their plans quickly. If they should fail to do so, a European war would develop after a short warming-up period following upon the German. Such a war would sooner or later end with a German capitulation. The coalition of western powers can, if they so desire, decide the war without a great sacrifice of lives, simply by blockading Germany. It is obvious what such a defeat would mean for Adolf Hitler's reconstruction program."

On 1 September 1938 Kordt, in London, reported to von Weizsaecker (*Weizsaecker 356, Weizsaecker Ex. 59*) :

"In the course of yesterday the British Government received information according to which the Fuehrer intends to solve the Czech questions by force. These items of information chiefly originate from Churchill, Vansittart, and Christie. In yesterday's talk with Lord Halifax, Churchill pointed out the necessity for timely and energetic action on the part of the British Government if they still wanted to prevent the outbreak of a war.

* * * * * * *

"In the Foreign Office all non-German visitors are given to understand quite openly that Britain would not yield again this time, as the other time in the case of Italy. The policy of the year 1935 had produced the most severe consequences and Britain had to make up its mind to confront the Germans with

a categorical 'stop' in conjunction with its allies, if need be by force of arms."

On 16 September 1938, von Hassell made the following entry in his diary:*

"Friday, 16 September:

"Weizsaecker told me today that apparently Chamberlain did not make it sufficiently clear that England would go to war if Germany used force."

We select these documents out of many because they are contemporaneous with the events under examination.

Von Hassell was a member of the resistance group and was executed by the Nazi regime in connection with the 20 July 1944 plot. The genuineness of his diary is not questioned.

This, with von Weizsaecker's own testimony, demonstrates not only that he was not engaged in planning or preparing an aggressive war, but that he was averse to it and that he expressed no thought that in the long run it would be successful, but on the contrary that it would involve disaster to Germany.

We pass now from the views which he expressed to his friend and collaborator, von Hassell, and to his chief, von Ribbentrop, to the efforts allegedly put forth to advise the French and English of Hitler's plans and the suggestions which he made for their frustration. Again we do not rely upon what his associates now say he thought and did, but upon what officials of foreign governments depose were his views and acts.

Lord Halifax, who was British Foreign Secretary from 1938 to 1940, deposed that although he never had any official contact with the defendant, he was frequently reported, by Halifax's advisers and the British Ambassador at Berlin, as being a convinced opponent of Nazi ideals and policy, and he used his official position in the Foreign Office to hinder as far as lay in his power the execution of von Ribbentrop's policies.

Lord Halifax gave his second affidavit in which he deposes that Theodor Kordt's letter of 29 July 1947 and his reply of 9 August 1947 state the facts. These letters on their face relate to the denazification proceedings of Erich Kordt, who was a witness before this Tribunal. Theodor Kordt wrote (*Weizsaecker 496, Weizsaecker Ex. 453*):

"You will remember that the information I gave you and Sir Robert Vansittart on Hitler's plans and moves in these terrible years of crisis came all from my brother Erich who held a key position in the opposition group. My brother hap-

* Von Hassell, Ulrich, The Von Hassell Diaries, 1938–1944 (Doubleday and Company, Inc., Garden City, New York), page 4 (Weizsaecker 292, Weizsaecker Ex. 60).

pened to be at that time in the Foreign Office in Berlin. His loyalty did not belong to this Nazi regime but to the German people and to the idea of European peace and international decency. May I recall that I informed you on 5 September 1938 of the impending attack on Czechoslovakia. In 1938 and 1939 I was in close (sometimes daily) contact with the Chief Diplomatic Adviser to H. M. Government, Sir Robert Vansittart. My brother came several times personally to London, notwithstanding the obvious risks for his safety, in order to inform Sir Robert personally of the impending danger on the international horizon. Sir Robert assured me that he would pass this information to you at once, for example, of Hitler's plans to come to an agreement with the Soviet Union, the negotiations between Hitler and Mussolini for an alliance, and the advice from the German opposition to put pressure on Mussolini in order to restrain his partner from the pursuance of his bellicose policy."

Lord Halifax's reply contains the following statements (*Weizsaecker 496, Weizsaecker Ex. 453*) :

"Of course I remember very well the information that came to me through Lord Vansittart in these days before the war, and that he said reached him from your brother. You will no doubt have been in communication with Lord Vansittart direct.

"I cannot doubt that in so acting your brother took very great risks and in so doing gave very practical evidence of his active opposition to the criminal policy of Hitler."

The Bishop of Chichester deposes as follows (Weizsaecker 497, Weizsaecker Ex. 454) :

"Information came to us in the United Kingdom that the State Secretary von Weizsaecker was opposed to Hitler, and von Ribbentrop, and the Nazi policies and was using his official position to avoid war. As this information went to our Secretary of State for Foreign Affairs, Lord Halifax, it was certainly known to the Undersecretary of State, Sir Robert Vansittart. Active steps were taken by, not only the brothers Kordt, but by the State Secretary, von Weizsaecker, contrary to Hitler's and von Ribbentrop's policies. Thus, through Bishop Berggrav of Oslo a proposal for peace was sent to Germany with the knowledge of the British Foreign Office. Church representatives in Germany refused even to accept this proposal. Bishop Berggrav then took it to von Weizsaecker, who not only accepted it for use as a possible means of peace talks, but also encouraged our efforts, all at great risk to himself. These facts were reported to the Foreign Office of the United Kingdom. Further,

von Weizsaecker also cooperated with Bishop Berggrav in endeavoring to have a representative of Great Britain meet with a representative of Germany to initiate peace talks. These facts were also reported to the Foreign Office of the United Kingdom. They demonstrate opposition by von Weizsaecker to the policies of Hitler and Ribbentrop and, with other information coming to us in England, show he was not 'the chief executant of Ribbentrop's policy' as Lord Vansittart states.

"In conclusion, my information from private and official sources is that von Weizsaecker was opposed to Hitler and von Ribbentrop, was genuinely opposed to war, did all he could to prevent war, and used his office for this purpose and to bring about peace once hostilities commenced. I have a special interest in the German opposition to Hitler, having been closely connected with the opponents to Hitler who were active in the German church conflict from 1933 onwards, and in particular I was visited by a representative of the opposition (Pastor Dietrich Bonhoeffer) who came over from Berlin to see me in the summer of 1942 when I was in Stockholm. On that occasion Pastor Bonhoeffer brought me secret information about the plot against Hitler, for communication to the British Government, and told me the names of many of the leaders, including Goerdeler and Beck. He also told me of members of the opposition in the Foreign Office. I passed this information on in personal interviews with Mr. Anthony Eden and Ambassador Winant of the United States."

The prosecution did not demand a production of any of these witnesses for cross-examination, nor did it file interrogatories to be used in lieu of their personal appearance before the Tribunal. The affiants are men of unquestioned probity, who were in a position to know the efforts made by the Foreign Office opposition to block and frustrate the plans of Hitler and von Ribbentrop for aggressive war. There can be no question whatever that both the Kordts were confidants and messengers of von Weizsaecker.

There are other affidavits from men prominent in the British and American diplomatic service which likewise tend to corroborate the testimony of both Erich and Theo Kordt.

We acquit the defendant von Weizsaecker under count one with respect to the Sudetenland.

Bohemia and Moravia.—The invasion and forcible incorporation of Bohemia and Moravia as a Protectorate into the "greater German Reich," and the intrigues by which Slovakia was induced and compelled to declare its independence were not originated by the defendant von Weizsaecker. Nor do we believe that he looked

upon the project with favor. However, this attitude does not constitute a defense if, notwithstanding his inner disapproval, he became a party, or aided or abetted or took a consenting part therein. He was connected with it, and this in no small way. Most, if not all, the conversations he had with the French, British, and Italian diplomats were conducted by von Weizsaecker in accordance with the custom of the Foreign Office. We shall advert to them hereinafter, but before discussing them we shall consider the evidence offered by the defense.

The defendant testifies that he was opposed to the invasion and in an attempt to prevent it, he directed Hencke of the German Legation in Prague to prepare a report which would demonstrate the willingness of the Czech Government to comply with the German wishes and to adjust the policy and legislation to German demands. This Hencke confirms and on 28 December 1938 rendered a report.

However, it is a Janus-faced affair. While on the one hand it delineates the attitude of the Czech Government as being cooperative, on the other it expresses distrust of some of its members and states that among the intelligentsia and many officials there existed a feeling that the then state of affairs was but transitory and they hoped for days of revenge; that it was not possible to judge whether the majority were for or against falling into line with Germany; that the preceding few weeks had led to a stiffening of the general attitude. He states that the former allies of Czechoslovakia, France and Russia, had been disinterested so far as foreign policy was concerned, and that during the decisive crisis in the nation, the French showed that they were not in any position to help Czechoslovakia; that relations with England were cool and that although, according to the opinion of the government, Britain would never help nor harm their country, they did not wish to sever relations with her completely. Hencke further spoke of the "recent improvement" of relations between the Czechs and Slovakia due to the visit of Hacha to Slovakia, and that the Slovakian Minister President, Tiso, had once again spoken of strengthening the bonds of "blood brotherhood," which had become very weak, and that the Slovakian population gave a remarkably favorable reception to Hacha during his visit; that in Czechoslovakia the enactment of the anti-Jewish and other legislation, following the German pattern, had aroused hostile feelings against Beran who had proposed and had them enacted.

We do not consider that this report in any way tended to help the situation or that it would do other than encourage any designs which Hitler may have had against the crippled Czech state. One does not calm a dictator who desires to crush a weaker state

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by pointing out the weaknesses of a well-intentioned government; the hostile feelings of the population toward the adoption of anti-Semitic and other legislation fathered by their powerful neighbor; or their coolness toward the only powers who could possibly come to their assistance; or by calling attention to the fact that the tension between an autonomous part of that state and the remainder was lessening. Such conditions would be factors impelling the dictator to do what he actually did, namely, to invade and take over.

We may state in passing that it is not at all unlikely that this report of the approaching entente between the Czechs and Slovaks may well have been one of the reasons that brought about Keppler's mission to Tiso in March 1939. The second step which the defendant claims to have taken was in February 1938 about 4 weeks prior to the invasion in requesting von Kessel, who was about to go to Switzerland, to endeavor to persuade the British to send a leading figure on a special mission to Berlin who could show Hitler the power of the British nation and thereby could make an impression on him. Von Kessel testified that he contacted a Jewish banker, Erwin Schoeller, who had political connections in England, and urged him to talk to the British. Why, in view of his close relations with the British Ambassador and his other connections in London, the roundabout approach through a Jewish Austrian banker should have been adopted instead of a direct approach such as he had theretofore used is not explained.

The third thing which von Weizsaecker asserts that he did to avoid coming events was to make a significant gesture to Attolico, the Italian Ambassador, when the latter made an inquiry as to the Czech situation.

Compared with the measures which von Weizsaecker took prior to Munich, these steps were to say the least anemic. The defendant's statements that he did not know of Hitler's intentions until 10 March 1939, we do not believe to be accurate. The fact that 4 weeks before he gave von Kessel the mission hereinbefore referred to, and the conversations which he had with Coulondre, Henderson, and the Czech Minister long before that date are inconsistent with his testimony.

We now turn to what he did and said during the months before the invasion.

On 10 November 1938, von Weizsaecker dictated a memorandum which went to Woermann, Ritter, Altenburg, and von Richthofen that he received the Czech, Stoupal, and on the latter's inquiry told him that the German policy toward Czechoslovakia was one of good neighbor relationship insofar as Czechoslovakia's intentions for close cooperation with Germany were realized, but

that there was still something missing in government circles such as the long-drawn-out course of economic negotiations; that he told Stoupal brutally that his government had made a bad mistake and must react positively to the solutions proposed by Germany and make arrangements for the treatment of employee contracts in order to oppose dismissals of national and racial Germans [Reichs- und Volksdeutscher], and that when Stoupal proposed a binational commission to handle such incidents, he replied that there should be no incidents and such commissions were out of place. He further stated that Stoupal did not express the wish to work together with any agencies of the NSDAP.

The defendant received from von Ribbentrop minutes of the latter's meeting of 11 October 1938 with Hitler, in which von Weizsaecker was directed to notify the Polish Ambassador that Germany was not interested in Oderberg, but in Morava-Ostrava and Vitkovice; that whether Morava-Ostrava and Vitkovice remained a part of Czechoslovakia depended on further developments; that with regard to Bratislava, the Hungarians were to be told that Germany was on principle sympathetic toward the Hungarian demands with respect to Czechoslovakia, but Germany would resort to arms only if German interests were at stake. For his personal information, von Weizsaecker was informed that if Hungary would mobilize, it would not be Germany's intention to restrain her or advise moderation.

It is to be remembered that this took place within 2 weeks after the Munich Agreement.

On 22 December 1938 Coulondre, French Ambassador to Berlin, reported to the French Foreign Minister his conference with von Weizsaecker as follows (*2943–PS, Pros. Ex. C–328*):

> "With regard to the international guaranty envisaged in favor of Czechoslovakia, Baron von Weizsaecker was reticent. When I reminded him that in Paris Mr. von Ribbentrop had expressed his intention of reexamining the question, and asked whether there were any new developments, he answered in the negative. 'Could not this matter,' he asked with a smile, 'be forgotten? Since Germany's predominance in that area is a fact, would not the guaranty of the Reich be sufficient?' I did not fail to remark that obligations entered into cannot be forgotten and placed the matter in its true light. But I received the impression that my interlocutor had already made up his mind.
>
> " 'Besides,' he concluded, 'it would be for Czechoslovakia to claim that guaranty. In any case, we are in no hurry to settle this question, and M. Chvalkovsky is not coming to Berlin until after the holidays.' Actually, the visit of the Czechoslovak Foreign Minister has already been postponed twice."

On 28 December 1938, von Weizsaecker reported to von Ribbentrop, with copy to Woermann, that he had talked with Magistrati, the Italian Charge d'Affaires; that the latter had again broached the subject of the guaranty for the integrity of Czechoslovakia, saying that he was directed by Count Ciano to state that the Italians wished to proceed in accord with the Germans. Von Weizsaecker states that he avoided going deeper into the subject, and told him that he had just recently explained to the French Ambassador, without any restraint, that Czechoslovakia depended exclusively on Germany, and that the guaranty of any other power was of no use; that the Czechoslovakia "of today" was different from that of the time when the guaranty was under discussion, and that he had already so informed Attolico.

On 8 February 1939 the British Government stated that it thought the time had arrived to settle the question of a guaranty of Czechoslovakia in accordance with the appendix of the Munich Pact, and in view of the statements made by the Italians in January the British desired the German opinion on the matter.

Von Weizsaecker prepared the answer to this, namely, that Germany did not think that the entry of England and France into such an obligatory guarantee would offer any security against the beginning or the aggravation of such disputes or conflicts which might arise as a result of it; that from past experience the Reich feared that declarations of guarantee on the part of the Western Powers in favor of Czechoslovakia would rather intensify the dispute between Germany and the surrounding states; that the attitude of the Czechoslovakian Government lay in the fact that in the past years the various Czech governments, as a result of the military guaranties given them by Western Powers, more or less seriously meant, believed that they could simply by-pass the inevitable demands of the ethnic minorities, and that the German Government was aware that in the last analysis the final development in this European area would come first and foremost within the sphere of the most vital interest of the German Reich.

On 22 February 1939 the Czechoslovakian Charge d'Affaires made an urgent request to confer with von Weizsaecker and during the interview gave him a note in which the question of the guaranty of the rest of Czechoslovakia was raised and connected with it a solemn pledge of neutrality and nonintervention on the part of that country, and asked to be informed as soon as possible of the German point of view, and stated that like notes were about to be delivered to Rome, Paris, and London. Von Weizsaecker reports that he answered the Czech statement saying that whether the step taken in Berlin was one-half or an hour

earlier or later did not seem to him to be relevant, and that it struck him that the Czech Government applied simultaneously to all the four Munich Powers in such questions without first entering into discussions with Germany alone.

On 3 March 1939 Mastny, the Czech Minister to Berlin, called on von Weizsaecker regarding the same matter, and von Weizsaecker called his attention to the answer already given to the French and British. Mastny stated that the guaranty would bring to an end the present state of uncertainty and give the Prague government a better chance to deal with those elements who disliked cooperation with Germany, and finally endeavored to persuade von Weizsaecker to see Masaryk, but von Weizsaecker turned this suggestion aside.

On 15 March the French Ambassador called on von Weizsaecker stating that Germany's march into Bohemia on the 14th gave reason to infer serious concern as to Germany's attitude toward the rest of Europe, and demanded information on these proceedings from German official quarters, stating that the entry into Czechoslovakia by German troops was in violation of the Munich Agreement. Von Weizsaecker reported that he treated Coulondre in a rather harsh manner telling him that he should not talk about the Munich Agreement being allegedly violated by Germany and should "abstain from giving us any lessons"; that the Munich Agreement contained two elements, namely, the preservation of peace and the French disinterest in eastern questions, and France should turn her eye toward the West and stop talking about things where its participation, as Germany knew from experience, did not promote peace; that the French Ambassador had realized that Germany would have been forced to establish order in Czechoslovakia on her own initiative, if the Czechoslovakian State President had not desired to call on Hitler and made the journey to Berlin, and that France should realize that this was not only a necessary action but also one agreed upon with the Czech Government.

All of these statements made to the French were, as von Weizsaecker then well knew, wholly false.

On 17 March 1939 von Weizsaecker reported that the British press—which had stated that the German Foreign Office had given both France and England assurances that Germany would take no drastic steps at the very moment when German troops had already crossed the Czech border—was wholly in error; that the French Ambassador had not inquired on the day in question, but rather, on Wednesday, and the British Ambassador had been told 5 hours before the German troops marched over the border; that the British Ambassador had been told otherwise,

that Germany would attempt to realize its demands in a decent manner, and the invasion would take place in a like manner.

On 18 March 1939 the French Ambassador attempted to deliver a note protesting against German action. Von Weizsaecker refused to accept the note and advised Coulondre to persuade his government to revise their opinions. When the Ambassador wished to go into the matter, describing it as a violation of the Munich Pact, von Weizsaecker stated that from the legal point of view there had been a statement agreed to between the Fuehrer and Hacha, and that the Czech President had come to Berlin at his own wish and had immediately and in advance declared to the Foreign Minister of the Reich that he wished to place the fate of his country in the hands of the Fuehrer; that he, von Weizsaecker, did not think that the French were holier than the Pope and wished to interfere in matters which had been agreed upon in an orderly fashion between Prague and Berlin.

Von Weizsaecker admits that these statements were not true. We find it difficult to reconcile the defendant's present protestations with the actions which we have just related. There is nothing to indicate that when Hitler's aggressive plans became imminent, as they had been for several months, he took any measures to encourage the British, French, or Italians to take any action to prevent Hitler from acting. His attitude was radically different from what it had been prior to Munich. The reason for that, we think, is obvious—before Munich he feared that France and England would take up arms in defense of Czechoslovakia, and that if they did so, Germany would suffer defeat. After Munich, he felt that this danger to Germany had vanished, and he looked with complacence, if not approval, on the future fate of Czechoslovakia.

He was not a mere bystander, but acted affirmatively, and himself conducted the diplomatic negotiations both with the victim and the interested powers, doing this with full knowledge of the facts. Silent disapproval is not a defense to action. While we appreciate the fact that von Weizsaecker did not originate this invasion, and that his part was not a controlling one, we find that it was real and a necessary implementation of the program.

We are therefore compelled to hold him guilty under count one with respect to the invasion of Czechoslovakia.*

Poland.—Von Weizsaecker's attitude with respect to Poland and the aggression against that state presents a difficult problem. The prosecution exhibits on this phase seem to indicate not only a spirit of intransigence but an attempt to induce the French and

* The Tribunal, with Presiding Judge Christianson dissenting, set aside this conviction by an order of 12 December 1949. See section XVIII D 1.

British to abandon or at least modify their Polish treaty to defend that country against Hitler's aggression. The claim that this treaty gave Poland a "blank check" is without merit. Neither the British nor the French so regarded it, and their representatives repeatedly so advised both the Polish and German Foreign Office. Its purpose was to make starkly clear to Hitler that the time for appeasement had gone by, and his oft-given assurances of a desire for peace and an absence of further territorial aims were regarded as being, what they actually were, wholly worthless. The defense suggests that this treaty of protection was a diplomatic error, particularly because the French and British commitments were made publicly, which tended to enrage Hitler and goad him to further action. Such an assumption, however, is based upon a speculation so tenuous that it is not worthy of consideration.

The methods of confidential approach and oral representations had been tried already and found futile. Hitler was immune to them. There was but one remedy left, namely, plainly and publicly to inform Germany that the next attempt at aggression meant war. Of course, it enraged Hitler, but it made him hesitate even though it had no effect upon his plans or his intentions. He did not dare make the attack in the face of the British and French guaranties to Poland until he had secured his eastern boundaries from possible attack by Russia. This he did by means of the German-Soviet Treaty of 23 August 1939. There he not only protected himself; but apparently by giving the Soviets a free hand in the Baltic States and in Bessarabia and by agreeing to share the loot in Poland, he gained a partner. As long as the Polish state existed, it is sheer nonsense to talk about Hitler's fear that the Soviets might attack. Whatever may have been the attitude of Poland toward Germany, there can be no question that had the Russians attacked the Reich, Poland and the Baltic states for their own preservation would have been thrown to the side of Germany, and the suspicion which Poland felt toward Russia would have made a Polish-Russian alliance wholly unlikely. If a Russian offensive took place in the north it could only go through Poland, and if it took place in the south, Hungary and Rumania were bound to stand alongside the German forces. It is quite obvious that neither France nor England who, in the fond hope of maintaining peace had failed to come to the aid of Austria and Czechoslovakia, would have joined in or even promoted Russian aggression. The fact is clear that Hitler at no time had any intention to abandon his plan to destroy Poland, that he only awaited a favorable opportunity, and only fear would have prevented him from carrying out his plans.

While giving full credit to the Poles and their magnificent battle to maintain their freedom, and without overlooking the desperate hazard of their position, far separated as they were from their allies, the fact remains that, at times, they did not realize the necessity of displaying caution and control in handling the situation and that their somewhat explosive attitude toward Hitler and the Nazi Party, who were bent on making incidents to justify an aggression, did not help the situation. That these mistakes irritated one who was trying to preserve peace is understandable, and that he should have expressed this irritation in talking with the French and British Ambassadors may well explain his desire that pressure be exerted upon the Poles to refrain from furnishing an excuse which could be seized by Hitler.

Von Weizsaecker had no part in the plan for Polish aggression; he was not in the confidence of either Hitler or von Ribbentrop. While his position was one of prominence and he was one of the principal cogs in the machinery which dealt with foreign policy, nevertheless as a rule, he was an implementor and not an originator. He could oppose and object, but he could not override. Therefore, we seek to ascertain what he did and whether he did all that lay in his power to frustrate a policy which outwardly he appeared to support. If in fact he so acted, we are not interested in his formal, official declarations, instructions, or interviews with foreign diplomats. In this respect we proceed with caution and reserve before accepting his defense that while apparently acting affirmatively he was in fact acting negatively.

In June 1935 a "visit" of a German naval squadron to the Port of Danzig was proposed, undoubtedly to make a display of force which, if carried out, might well have lit the flames of war. Von Weizsaecker fortified himself with the opinion from Referent Kampenhoevener which called attention to the fact that by agreement between Poland and the Free City of Danzig, requests from foreign powers to bring men-of-war into that port were to be presented first to the Poles for consideration, and the diplomatic correspondence would be conducted by that country and not by the city of Danzig, and that Germany had recognized and constantly observed this practice. Based on this memorandum, von Weizsaecker delayed the matter and on 19 July 1939 advised that while a warlike solution of the Danzig question would almost always be kept in mind, blame must be put on the Poles, whereas sending part of the fleet to Danzig would be internationally interpreted as an overture to the generally expected German-Polish conflict.

Early in July 1939 Keitel inquired as to the political advisability of publicly displaying certainly artillery which the Wehrmacht

had smuggled into Danzig, and on 14 July von Weizsaecker instructed von Nostitz to inform Keitel that while artillery exercises were doubtlessly necessary, they should be carried on indoors, and it would be advisable to wait; that the Poles would certainly commit a new blunder which could be answered by a public appearance of the batteries. Notwithstanding certain phrases in these documents, the fact remains that his advice was that of caution that inflammatory incidents might be avoided, and was in opposition to the plans of Hitler and the Wehrmacht. The German-Russian treaty had not yet been negotiated, and that between the French, British, and the Soviets had not as yet failed.

As early as 16 August 1939, Henderson, the British Ambassador to Berlin, reports a conversation with von Weizsaecker. This is one of the documents upon which the prosecution strongly relies as it discloses not only an acrimonious discussion between the Ambassador and the State Secretary, but also von Weizsaecker's irritation over the Polish action and his attempt to persuade the British to at least modify the so-called "blank check" agreement. To us, however, even more significant is the fact that he plainly warns the British of the danger of war and of Hitler's attitude and before the Soviet Pact was signed (23 August 1939) informed Henderson that he believed that Russian assistance to the Poles would not only be entirely negligible, *but the U.S.S.R. would even in the end join in sharing the Polish spoils.* Thus, the British received explicit warning, and the door was open to them either to endeavor to block the execution of any pact between Germany and Russia, or if this were impracticable, otherwise to prepare themselves for the event. We do not believe that one who was in favor of the prospective aggression against Poland would reveal the likelihood and imminence of a German-Russian pact.

We do not rely upon the affidavits of the Swiss, Karl J. Burckhardt, who was then International Commissioner for Danzig, except insofar as they are corroborated from other sources, this for the reason that the witness did not appear for cross-examination, either because of his own reluctance or upon instructions from his government. We find it difficult to reconcile a willingness, personal or governmental, to permit an *ex parte* statement to be given and an unwillingness to permit inquiry as to the accuracy of the statement.

Turning now to the contemporaneous documents on 15 August 1939 von Weizsaecker had discussions with both Henderson and Coulondre, French Ambassador. These are official reports. While the conversations express an attitude on the part of von Weiz-

saecker inconsistent with his present claim that he disagreed with the policies of Hitler and von Ribbentrop, and are critical of Polish policy, and express the hope that the policy it was pursuing would lessen the bond between the Western Powers and Warsaw, it is also clear that he informed both ambassadors of the imminent danger and likelihood of war. Henderson says (*Weizsaecker 326, Weizsaecker Ex. 110*):

> "When last I saw him [State Secretary von Weizsaecker], he had regarded the position as less dangerous than last year; now he considered it no less dangerous and most urgent."

Both ambassadors clearly warned von Weizsaecker that if the Poles were compelled by any act of Germany to resort to arms to defend themselves, there was not a shadow of a doubt that the Western Powers would give them support.

Coulondre went even further and stated (*Weizsaecker 27, Weizsaecker Ex. 108*):

> "I advised him not to lose himself in subtleties; the fact was that if any of the three Allies, France, England, and Poland, were attacked, the other two would automatically be at her side."

Long prior to this, and when Hitler's plans for Polish aggression again became more clear, von Weizsaecker instructed Kordt in London to discuss the situation with Lord Halifax and others connected with the British Foreign Office, and to point out the necessity speedily to pursue their negotiations with the Soviet Union for a treaty of mutual assistance against German aggression. Kordt received assurances that these negotiations were certain to be successful.

On 17 August 1939 Coulondre reported to the Quai d'Orsay, and described not only his own views, but the comments of the British Ambassador after his discussion with the defendant. Coulondre says (*Weizsaecker 211, Weizsaecker Ex. 111*):

> "In this connection I was extremely struck by the fact that on the same day the State Secretary had asked both my British colleague and myself the same question, namely, 'Would your government wage war on the side of Poland if the conflict had been provoked by the latter?' This question might have been asked either by order of higher authorities and because there was doubt on the subject, or because the State Secretary opposed to war and uneasy at the development of the situation would have liked to gain from our replies support for action in higher quarters. I am inclined toward the first hypothesis, but whichever of the alternatives is correct, the question strikes me

as a particularly grave one, as it would seem to indicate that Hitler is still harboring illusions on the attitude of France and England in the event of a German-Polish conflict, or at least that attempts are still being made to delude him on the subject."

Von Weizsaecker Exhibit 120 [Weizsaecker 157] is identified by Ellinor Greinert as being carbon copies of memoranda written by von Weizsaecker and given to her for safekeeping in 1939 by Dr. Viktor Bruns. They are dated 30 August, 31 August, 5 September, and 7 September 1939. The first states that the British Embassy which had been asked late on the night of 29 August to undertake the task of having Poland send a Plenipotentiary for negotiations at 4 o'clock in the morning, reported the technical difficulties in bringing the Plenipotentiary to Berlin before the end of 30 August, and at 11 a.m., pleaded for more time, and that the British Ambassador in the afternoon wrote von Ribbentrop to the same effect. Von Weizsaecker relates the midnight interview between Henderson and von Ribbentrop, at which the latter hastily read the German proposal, and refused to give Henderson a copy on the basis that it was outdated.

The memorandum of 31 August states that the whole day had been devoted to the question whether or not a connection between Warsaw and Berlin could be established and that he, von Weizsaecker, had suggested that the Polish Ambassador should be given an audience; that von Weizsaecker discussed this matter with von Ribbentrop who disagreed, and that von Weizsaecker thereupon offered to resign and "even more"; that he told von Ribbentrop that he, von Weizsaecker, would be a swine if he did not tell him what he thought.

As a result, Lipski was received but sent away with the formal excuse that he did not possess any authority to negotiate.

The memorandum of 5 September 1939 is a history of the efforts, beginning as early as April 1938, which he claims to have made to preserve peace and his hope that the Italians, on 2 September, would endeavor to bring about a truce.

The memorandum of 7 September recites that when all other attempts to bring a Polish Plenipotentiary to Berlin had failed by 12 o'clock on 31 August, the only remaining hope resided in German military circles, he informed Goering that it was high time he came, and asked him whether they were obliged to allow an insane adviser of Hitler to destroy the Reich; he said that von Ribbentrop would be the first one to hang, but others would follow; that Goering had implored the Fuehrer three times to give in, but Hitler only shouted at him and sent him away. He said (*Weizsaecker 157, Weizsaecker Ex. 120*):

"I told Brauchitsch that politics were at an end. I said that we were dealing not only with Poland, but also with England and France. That was certain. I said to him that the military, i.e., he, Brauchitsch, would have to bear the responsibility before history if we entered into this war, and I asked him if he wanted to take upon himself this responsibility just because Hitler had an insane adviser. All that Brauchitsch had to say was that the Fuehrer did not think that the English and French would participate in this war and that was what Brauchitsch would have to go by. When I asked him whether or not he was reading the newspapers, he only shrugged his shoulders. Thus, my last hope vanished."

These documents, if genuine, are of utmost significance. We think that they are suspiciously "pat" and no reason appears for writing them unless one was attempting to speak to history. We would receive them only with the greatest caution unless they were corroborated. To a large extent they are. First, there are the entries in the von Hassell diaries, the genuineness of which is not questioned. Von Hassell was in early and continuous opposition to Hitler, an opposition which ended only with his execution after the unsuccessful Putsch of 20 July 1944. We quote:*

31 August 1939.

"This morning at 7:25 [o'clock] von Weizsaecker called me and asked me to meet him at 8:40 [o'clock]. He explained that he had to deal with the following situation: Since nothing had been heard so far from the Poles, von Ribbentrop had called for Henderson last night and had railed at him, exclaiming that these delaying tactics of the English and Poles were contemptible. The German Government had been prepared to make a very acceptable proposal which he read to Henderson. Essentially it contained the following points: Danzig to be ceded to the Reich, but demilitarized; Referendum in the main part of the Corridor, and depending upon the result either a German east-west traffic route or a Polish south-north route to Gdynia which would remain Polish. But these definitely modest terms were of course no longer open as no Polish negotiator had come. Therefore, there was nothing left for Germany but to take action to secure its rights.

"After this unfriendly interview, which did not constitute a complete break, Hitler made it known that the other side had now put itself clearly in the wrong, and that therefore an attack might begin this afternoon. Von Weizsaecker considers

* Von Hassell, op. cit., pages 68–72 (Weizsaecker 297, Weizsaecker Ex. 117).

the situation extremely serious; matters stand exactly where they were on Friday. Must we really be hurled into the abyss because of two madmen?

"Of course one can never be sure with Hitler; it is not entirely out of the question that he will recoil at the last moment. But we agreed that we could hardly expect this to happen since, after all, Hitler had really decided on war Friday and had given orders to that effect. Under the circumstances von Weizsaecker could see only one hope—that Henderson should immediately persuade the Polish Ambassador and his own government to urge Warsaw this very morning to send a Plenipotentiary at once, or at least to have Lipski announce this intention to von Ribbentrop before noon. Could I 'privately' influence Henderson to this end, and could I perhaps also warn Goering about the rash decision of Hitler? Goering should be made to understand that von Ribbentrop was digging the graves of the Reich and of national socialism. Karinhall would go up in flames! I said I was prepared to try my luck.

"My impression was that von Ribbentrop and Hitler are in a spirit of criminal recklessness. They are running the most fearful risks involving the whole German people merely to save their own prestige by some minor success; all this, of course, being only a temporary stopgap. So far as I am concerned the one vital thing is to avoid a world war.

"I found Henderson at breakfast; he had got to bed at 4 o'clock. He was, above all, shocked at von Ribbentrop's bad manners. Von Ribbentrop was evidently determined to play in this war the baneful role Berchtold had played in the last one. Henderson said von Ribbentrop had read him the German proposals very hurriedly, 'had gabbled them,' had not given him a copy because they were now 'water over the dam.' The peremptory character of our latest move was destroying all efforts to keep the peace. I explained the situation to him and emphasized that I came entirely as a private person and without orders and had only the desire to help in reaching a peaceful solution by making clear to him the stupendous significance of the next few hours.

"He said that during the night he had been in touch with London, as well as with Lipski, and that he would continue his efforts. The chief difficulty lay in our methods, particularly the way in which we expected the English to order the Poles around like stupid little boys. I told him that the persistent silence of the Poles was also objectionable. This Slavic behavior, with which he doubtlessly had become familiar in Petersburg, was dangerous. He said nostalgically, he wished

those times would only come back—times, I countered with a poor attempt at jesting, in which he had almost strangled his ambassador. Now, it seemed to me, he was in a mood to strangle others. In conclusion, Henderson said it would be easy to reach an understanding between England and Germany if it were not for the calamitous von Ribbentrop. With him it would never be possible.

"About 9:30 I went to Olga Riegele, told her that the situation was terribly serious, and asked her to arrange a meeting between me and her brother, Hermann (Goering). Tearfully the good woman did so at once. She was successful in reaching him at his 'battle station,' as he later put it, and I had a long conversation with him. He asked at once whether I wanted to talk with him about the Italians. I said 'no,' but stated that I was a friend of Henderson who was doing all he could to keep the peace. Goering asked why in that case he had been so 'snooty' during the latest discussions. I answered I did not believe that was his intention, but possibly it was difficult for some people to get along.

"Goering said he liked Henderson but that he was too slow. I answered that naturally he was an Englishman and not a Latin, but he was doing his very best. Goering said he thought our proposal was really modest, to which I replied that it had been described as no longer valid. Goering thereupon became very animated and asked how Henderson could have reached this conclusion since the proposal would become invalid only if no Polish negotiator arrived. I answered that this point was most important, that I would tell Henderson at once and urge him to exert himself further in that direction.

"Goering: 'Yes, but he must come at once.'

"I [von Hassell]: That is technically impossible; it must suffice if the Poles declare they will send one.

"Goering: 'Yes, but he must come very quickly. Go tell the Foreign Minister immediately what you have heard from Henderson.'

"I [von Hassell]: I do not know whether I can do that, but in any case I will tell von Weizsaecker.

"My impression was that Goering really wants peace. Olga had previously told me, weeping, that recently he had put his arms about her and said, 'Now, you see, everybody is for war, only I, the soldier and field marshal, am not.'

"But why then does this man at this moment sit in Oranienburg? And Brauchitsch and Halder are flying about over the West Wall!

"I went back to Henderson at once and told him what Goering had said. He was greatly interested and wrote down the most important parts. Then to von Weizsaecker, to whom I reported the steps I had taken.

"After an hour von Weizsaecker called for me again. Henderson had requested the text of our proposals in order to have something to show to the Poles. Officially von Weizsaecker was not permitted to give it to him. Did I think it possible to give Henderson a more detailed knowledge of the contents, which meant perhaps to put the paper itself into his hands? The document lay before me on the table.

"At that moment a telephone call came from von Ribbentrop, and immediately thereafter a second. The gist of both was that Henderson should not be given the proposals. He himself would call and tell him that the Poles had been plainly told they would get the proposals if they sent a Plenipotentiary. We agreed that under these conditions it was now impossible to give Henderson the document or any further details.

"Von Ribbentrop had forbidden von Weizsaecker to have any further dealings with Henderson and had added that Hitler had ordered all advances be rebuffed. That was proof for von Weizsaecker that Hitler and von Ribbentrop wanted war; they imagined their proposals had furnished them an alibi. This seems nonsensical to me if the proposals are not given to the Poles.

"Von Ribbentrop further stated that during the next half hour it would be decided whether the proposals should be made public. If this is really under discussion, it is altogether incomprehensible why the proposals should not be given to Henderson, unless they want war.

"Von Weizsaecker said Rome was making efforts to mediate in London. Mussolini is said to have declared that a *fait nouveau* had to be created and the best move would be for Poland to cede Danzig to Germany at once. Von Weizsaecker was very doubtful whether the Poles would do that. London, for its part, informed the Italians that the only question now was one of honor; whether we asked Lipski to call or whether he was to come of his own accord. With this in mind I discussed with von Weizsaecker whether I should go to Henderson once more to induce him to get Lipski out of his hole. But we agreed that Henderson knew the situation and would do all he could anyway. Perhaps I shall still go to see him.

"*Afternoon.*—I did go to call on Henderson and met him in front of the embassy. I told him everything depended on Lipski's putting in an appearance—not to ask questions, but to

declare his readiness to negotiate—but at once. He wanted to support this suggestion immediately. I also told Henderson that Goering had arrived. Young von Kessel had just seen him drive in.

"At the Foreign Office I had met Moltke (Ambassador in Warsaw) and arranged to have lunch with him at the Adlon. As I arrived at the hotel von Kessel appeared in great alarm to tell me that Lipski had presented himself, but that there was a reluctance to receive him. Since Moltke had told me the same thing a few minutes before, I tried first by telephoning Olga Riegele to influence Hermann Goering, with the request that he give me a hearing if possible. I did not succeed however. Von Kessel declared the danger was extremely grave. Von Weizsaecker had told him the best thing would be to persuade Mussolini to telephone Hitler at once.

"Could I go to see Attolico? I was not very anxious to perform this mission, but in view of the situation I said I would. Attolico received me at once. He swore that once upon a time he had done everything possible for me! And I promised absolute silence concerning our conversation. He understood instantly what was at issue and promised to telephone Rome at once."

We also have the affidavit of the widow of Ambassador Attolico, which bears out von Weizsaecker's statement that he induced the Italian Ambassador to inform Rome of the impending danger and to persuade Mussolini to intervene. That this was done is apparent from the Ciano diaries. These entries begin with 19 July 1939, as follows (*Weizsaecker 48, Weizsaecker Ex. 104*):

"19 July 1939.

"I summon Magistrati to Rome on the matter of the meeting between Hitler and Mussolini, which is set for 4 August. I fear that it is due to Attolico's endemic crisis of fear. Nevertheless, we must prepare the meeting well in order to prevent its being futile. Perhaps, in view of the fact that for many reasons war plans must be delayed as long as possible, he could talk to the Fuehrer about launching a proposal for an international peace conference * * *. But what are the real intentions of Hitler? Attolico is very much concerned and warns of the imminence of a new and perhaps fatal crisis.

"20 July 1939.

"The information sent by Attolico continues to be alarming. From what he says, the Germans are preparing to strike at Danzig by 14 August. And for the first time Caruso from Prague announces movements of forces on a vast scale. But is

it possible that all this should take place without our knowing it, indeed, after so many protestations of peace made by our Axis comrades? We shall see * * *.

"21 July 1939.

"Massimo (Count Magistrati, Counsellor to the Italian Embassy in Berlin) is not so pessimistic about the situation and he confirms my suspicions that Attolico permitted himself to be carried away in a fit of panic without very good reasons * * *.

"22 July 1939.

"I take Magistrati to the Duce, who has worked out a plan of welcome for the meeting at Brenner Pass. It is based on the proposal of an international conference. The Duce outlines at some length the reasons for our proposal. I am skeptical of the possibilities of such a conference actually taking place, but I agree on the utility of our move which will, above all, throw confusion and dissension into the camp of the opposition where many voices are already being heard against war.

"I insist on two points—(1) That the condition must be included that our proposal be considered valid only if the Germans do not previously decide to wage war, since, in that case, it would be useless to discuss anything; (2) that von Ribbentrop is interested in the question. I am doubtful, very doubtful, about Attolico's ability now. He has lost his head. I am sending a telegram to Magistrati ordering him to take part personally in all the negotiations.

* * * * * * *

"26 July 1939.

"I talked by telephone with Magistrati about the conversation with von Ribbentrop. His reaction to the proposal of an international conference was unfavorable. He will talk about it to the Fuehrer, but it is now easy to see that nothing will come of it. In which case, it would seem to be a good idea to postpone the meeting of the two chiefs. In any event, before suggesting a decision to the Duce, I prefer to await the arrival of Attolico's message that is to be sent by airplane * * *.

"27 July 1939.

"* * * I receive Attolico's report, which I send to the Duce. The boner pulled by the Ambassador becomes more and more evident. Once again von Ribbentrop has affirmed the German determination to avoid war for a long time. The idea of postponing the useless meeting at the Brenner Pass takes hold of me more and more. However, I ask the Duce to read the report before he makes any decision * * *.

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"28 July 1939.

"After reading the report, the Duce decided to postpone his meeting with Hitler and I think he did well. I telephone Attolico, who is still trying to kid us. This time Attolico missed the boat. He was frightened by his own shadow and probably with somebody in the German Foreign Ministry was trying to save his country from a nonexistent danger. It's too bad. This Ambassador has done good work, but now he permits himself to be taken in by the war panic. This may easily be explained by the fact that he is a rich man.

"It appears that von Ribbentrop has asked time to report to Hitler, who had expressed himself against the conference. Tomorrow we shall have a reply on the postponement.

* * * * * * *

"2 August 1939.

"* * * Attolico continues to harp on his favorite theme of the meeting of Hitler and Mussolini, still insisting on the bugbear of a sudden decision that will be made by Hitler for 15 August. The insistence of Attolico keeps me wondering. Either this Ambassador has lost his head or he sees and knows something which has completely escaped us. Appearances are in favor of the first alternative, but it is necessary to observe events carefully.

"3 August 1939.

"* * * Massimo writes a private letter from which it appears that he is in disagreement with the Ambassador as to the danger of an approaching crisis. He advises us against asking the Germans for a clarification of their program. If Massimo notwithstanding his considerable—his very great—caution, has decided to take such a step, it means that he is sure of what he is doing. I have transmitted his letter to the Duce. Roatta, the new military attaché on the other hand, informs us of the concentration of forces and movements on the Polish frontier. Who is right? I may be mistaken, but I continue to feel optimistic.

"4 August 1939.

"* * * Attolico's alarmist bombardment continues. The situation seems obscure to me. I am beginning to think of the possibility of a meeting with von Ribbentrop. The moment has come when we must really know how matters stand. The situation is too serious for us to view developments passively.

* * * * * * *

"6 August 1939.

"* * * We discussed the situation. We are in agreement in feeling that we must find some way out. By following the Germans we shall go to war and enter it under the most unfavorable conditions for the Axis, and especially for Italy. Our gold reserves are reduced to almost nothing as well as our stocks of metals, and we are far from having completed our autarchic and military preparations. If the crisis comes we shall fight if only to save our honor. But we must avoid war. I propose to the Duce the idea of my meeting with von Ribbentrop; a meeting which on the surface would have a private character, but during which I would attempt to continue discussion of Mussolini's project for a world peace conference. He is quite favorable. Tomorrow we shall discuss the matter further, but I am convinced that the Duce wants to move vigorously to avoid the crisis. And in so doing he is right.

"7 August 1939.

"* * * The Duce has approved my meeting with von Ribbentrop, and I have therefore telephoned Attolico instructions on this point. Attolico himself had thought of something of the sort and was very glad * * *.

"8 August 1939.

"* * * Massimo writes in a rather soothing tone from Berlin. He does not foresee any immediate aggressive intentions on the part of Germany, even though the Danzig situation is grave and dangerous.

"9 August 1939.

"Von Ribbentrop has approved the idea of our meeting. I decided to leave tomorrow night in order to meet him at Salzburg. The Duce is anxious that I prove to the Germans, by documentary evidence, that the outbreak of war at this time would be folly. Our preparation is not such as to allow us to believe that victory will be certain. The probabilities are 50 percent, at least so the Duce thinks. On the other hand, within 3 years the probabilities will be 80 percent. Mussolini has always in mind the idea of an international peace conference. I believe the move would be excellent.

"10 August 1939.

"The Duce is more than ever convinced of the necessity of delaying the conflict. He himself has worked out the outline of a report concerning the meeting at Salzburg which ends with

an allusion to international negotiations to settle the problems that so dangerously disturb European life.

"Before letting me go he recommends that I should frankly inform the Germans that we must avoid a conflict with Poland, since it will be impossible to localize it, and a general war would be disastrous for everybody. Never has the Duce spoken of the need for peace with so much warmth and without reserve. I agree with him 100 percent, and this conviction will lead me to redouble my efforts. But I am doubtful as to the results."

Hitler received Ciano and assured him that the war with Poland could be localized, and although Ciano expressed grave misgivings and pointed out Italy's inability to wage war, he fell under Hitler's spell and weakened.

On 7 August 1939 von Hassell records the following in his diary:*

"Most important event—10 or 12 days ago Attolico called on Ribbentrop (after having seen von Weizsaecker) and finally Hitler, with a message from the Duce to the following effect: the meeting of the Duce and the Fuehrer at the Brenner, set for 4 August, would be useful only if something tangible should come out of it. And, in view of the entire situation, this something could only be a decision to call a six-power conference (Italy, Germany, France, England, Spain, Poland) in order to solve the Italian-French as well as the German-Polish conflicts. If this were not done now, it would have to be done in 4 to 6 weeks' time. This message had the effect of a thunderbolt."

On 20 August 1939 Noel, French Ambassador in Warsaw, wrote the French Foreign Minister as follows (*Weizsaecker 411, Weizsaecker Ex. 405*):

"From a very reliable source I learned that Wilhelmstrasse circles were gravely concerned by the turn of events and believe that Mr. Hitler is determined to 'settle the Danzig question' before the first of September."

This information could only have come from von Weizsaecker or one of his circle in the Foreign Office.

On 31 August 1939 Ciano recorded the following (*Weizsaecker 410, Weizsaecker Ex. 409*):

"An ugly awakening. Attolico telegraphs at 9 [o'clock], saying that the situation is desperate and that unless something new comes up there will be war in a few hours. I go quickly to the Pallazzo Venezia. We must find a new solution. In

* Von Hassell, op. cit., page 54 (Weizsaecker 443, Weizsaecker Ex. 407).

agreement with the Duce I call Halifax by telephone to tell him that the Duce can intervene with Hitler only if he brings a fat prize: Danzig. Empty-handed he can do nothing. On his part, Lord Halifax asks me to bring pressure on Berlin so that certain procedural difficulties may be overcome and direct contacts established between Germany and Poland.

"I telephone this to Attolico who is more and more pessimistic. After a while, Halifax sends word that our proposal regarding Danzig cannot be adopted."

These exhibits corroborate in almost every detail the oral testimony of the defendant and his witnesses. They are drawn from sources which are unimpeached.

We deem the fact to be established that instead of participating, planning, preparing, or initiating the war against Poland, the defendant used every means in his power to prevent the catastrophe. He was not master of the situation; he had no decisive voice, but he did not sit idly by and stolidly follow the dictates of either Hitler or von Ribbentrop, but by warnings to other powers, whom he knew would be involved in the war if Hitler's mad plan came to fruition, and by suggestions which he caused to be made to England to hasten the completion of its proposed pact with Russia, and by bringing all the pressure he could to cause the Italians to intervene, he sought to avert it. Although these efforts were futile, his lack of success is not the criteria. Personalities, hesitation, lack of vision, and the tide of events over which he had no control swept away his efforts. But for this he is not at fault.

We find that he is not guilty under count one respecting aggressive war against Poland.

Denmark and Norway.—On 16 March 1940 von Hassell records the following:*

"[von Weizsaecker] * * * is alarmed because, on the occasion of Ribbentrop's visit to Rome * * * on 10 and 11 March, Mussolini refrained from uttering a single word of protest against the offensive, but spoke of our 'brotherhood in destiny' and of his intention to enter the conflict. He had however made reservations regarding the date of his action.

"My explanation is this: Mussolini received the distinct impression that Hitler is determined to attack. This being so, he thinks it would be a tactical error to issue further warnings and now prefers to show himself sympathetic. If, contrary to expectation, things go well and if everything else looks favorable, he will come in on our side. Should matters go badly, he still has an alibi and can work out a way to extricate himself."

* Von Hassell, op. cit., pages 124 and 125 (Weizsaecker 299, Weizsaecker Ex. 129).

Some months before the invasion of Denmark and Norway, von Weizsaecker received information from Canaris that this matter was being considered but was unable to obtain details. It appears that on 6 April von Weizsaecker was present at a conference with the Wehrmacht, at which the Foreign Office was informed of the details of the plan and of the part it was expected to play on the diplomatic side. On the same day he had a conference with von Ribbentrop at which Gaus was present. It does not appear which conference was the earlier. Gaus made two statements about this matter: one which he confirmed on the witness stand, and one which he made to the interrogating officer some time in 1946. In the latter he states that von Weizsaecker seemed as surprised at the news as he himself was, and "both of us reacted to this sudden information by pointing out ineffectually that it would awaken a storm of resentment throughout the whole world."

In the later affidavit, which he confirmed on the witness stand, he deposed that von Weizsaecker did not seem to be surprised and made no protest. In view of these conflicting statements, we cannot say with the necessary degree of certainty where the truth lies, but in view of the fact that it was only on 3 April that Keitel informed von Ribbentrop of the plan, apologizing for the fact that the Foreign Office would have so little time to prepare its diplomatic tasks, it is unlikely that von Weizsaecker had precise information before 6 April.

We deem the precise date of von Weizsaecker's knowledge as immaterial. Hitler had already made his decision, the Wehrmacht had made its plans and was in fact on the move although acting with utmost secrecy. Nothing which von Weizsaecker could have done would have had any effect on the situation, and there was little or no time for maneuvering, and little and probably no opportunity to give warning. The part that the Foreign Office played in the matter of these two aggressions is insignificant and consisted in sending notes by courier to its representatives in Denmark and Norway, who were at a specified hour and day to communicate their contents to those governments. These notes were not prepared by von Weizsaecker and the most which can be said is that he either ordered or knew of the dispatch of the courier.

But even here there are some indications that the defendant was perturbed about the possibility of the war being further extended. In March 1940 Sumner Welles, then Under Secretary of State for the United States of America, visited Berlin. We quote from his book, The Time for Decision:*

* Extract from this book was introduced in evidence as Document Weizsaecker 263, Weizsaecker Exhibit 127.

"Ribbentrop has a completely closed mind. It struck me as also a very stupid mind. The man is saturated with hate for England to the exclusion of any other dominating mental influence. He is clearly without background in international affairs, and he was guilty of a hundred lies in his presentation of German policy during recent years.

"Late that same afternoon I went to see State Secretary von Weizsaecker in his office at the Foreign Office. In the German official hierarchy, the position of state secretary has corresponded since the days of Bismarck to that of Under Secretary of State in our own country.

* * * * * * *

"I spoke with Mr. von Weizsaecker of my earlier conversation with Ribbentrop, and after hesitating a moment, Weizsaecker said: 'I am going to be quite frank with you. I have been strictly instructed not to discuss with you in any way any subject which relates directly or indirectly to the possibility of peace.'

"He then drew his chair toward the center of the room and motioned to me to do likewise. It was evident that the omnipresent German secret police dictaphones were installed in the walls rather than in the central lighting fixtures.

"We had for a while a desultory conversation. I then reverted again to my conversation with Ribbentrop, I said that if the feeling of the German Government as a whole was as decisive as that of Mr. von Ribbentrop that a war of devastation and of conquest was the only course for Germany to follow, I would be needlessly taking up the time of the German authorities by prolonging my stay.

"Mr. von Weizsaecker thought a good 3 minutes before replying. Then he leaned toward me and said: 'It is of the utmost importance that you say that personally to the Fuehrer when you see him tomorrow.'

"I waited a moment myself, and then asked him: Let me have your personal advice, for I am now asking an entirely personal question. Do you believe that any suggestions for peace conversations proffered by Mussolini would have any favorable reception here?

"This time Mr. von Weizsaecker again waited before answering. His reply when it came was: 'What I have already said about the Fuehrer answers a part of your question. But,' and here he motioned to the Foreign Office in which we were, 'here the relations between Germany and Italy have narrowed greatly.'

"The only interpretation which could be drawn from his statement was that in Weizsaecker's opinion, if the Duce were to approach Hitler directly and secretly, it might have some effect. If Ribbentrop knew of the approach he would do his utmost to block it."

While it is not wholly clear that von Weizsaecker spoke with reference to Denmark and Norway, it is, we think, apparent that he was apprehensive of future action on the part of Hitler and was endeavoring to have pressure brought on Mussolini. We find von Weizsaecker not guilty under count one as to Denmark and Norway.

The Low Countries.—The plans for the aggressive invasions and wars against Holland, Belgium, and Luxembourg were prepared shortly after the beginning of the Polish war. Von Weizsaecker admits that he knew them as early as 12 October 1939 and verified that it was only a question of when they would be put in motion. For various reasons these invasions were postponed from time to time, but finally erupted on 10 May 1940.

The question for determination is not whether von Weizsaecker had prior knowledge, but what if anything he did either to implement or, on the other hand, to prevent and frustrate these invasions. We shall in particular deal with these in the reverse order.

It was obvious to the defendant that these invasions if carried out had but one purpose, namely, a flanking movement against France, thus avoiding the hazards of a direct attack against the Maginot Line. On 12 October, that is, immediately after he became aware of the plans, he furnished von Ribbentrop with a memorandum and followed it up by a discussion of 26 October. We quote from these memoranda because they are significant (*Weizsaecker 370, Weizsaecker Ex. 122*):

"Without wanting to anticipate the proper military judgment, the following is an accomplished fact in my opinion:

"1. The submarine and surface commercial war, in consideration of the present number of warships, is not able to interfere with the British supplies from overseas to such an extent as to compel Great Britain to assume a conciliatory attitude even if enemy and neutral ships are sunk without warning. The German submarine building program will be able to meet the requirements only after a considerable time.

"2. The war in the air against British supplies from overseas likewise can not be conducted effectively this winter.

"3. Even a combination of points 1 and 2, meaning the intensified war on the sea and in the air against the British sea lanes,

would be inadequate today. Any such waging of the war must be undertaken with sufficient means and with lightning speed unless it peters out.

"4. In consideration of the structure of Great Britain, air raids on the vital targets on land would not give much hope for dealing a deadly blow to Great Britain.

"Apart from the military reasons, there are also political viewpoints which forbid the starting of the unlimited war by submarines and in the air in the near future. This manner of warfare would force the neutral seafaring states into the arms of Great Britain. The United States of America would presumably soon disrupt their relations with us. Psychological and material reverses similar to those of 1917–1918 would be unavoidable as a consequence of the unrestricted submarine war. For this reason we would make new enemies without being in the possession of arms which would force Great Britain to her knees.

"*Ad b.* For splitting off France from Great Britain by force and to induce her to conclude a separate peace, an offensive against France on land would be necessary. According to my information, the success of a frontal offensive along the border between Germany and France would come too costly. An offensive through Belgium would perhaps result in bringing this country into our hands, but would not open the road for an entry into France. We would only have a new, just as long, and only much weaker defense line than we have today. The extension of the war theater would benefit only France and not us. Both methods—the frontal and the flanking attack—will not lead to the military target and would only awaken the fighting spirit of the French citizen and soldier which is still dormant today. Whether the possession of Belgium would actually be indispensable and decisive in the war in the air against Great Britain, must be left open.

"From political viewpoints, the entry in Belgium would earn us only all the disadvantages with which we are sufficiently acquainted from the year of 1914.

"Obviously, our strength lies in the defense. It is nearly impregnable. It gives us the wanted military security. It saves our material. It helps us to keep the neutral groups intact.

* * * * * * *

"If the enemy does not commit the grave error of violating the neutrality in a serious manner, then we can hope that the constant inactivity of a defense on both sides will slowly

weaken the will to fight in France until it dies. And that would open the road to peace.

"The decision on whether we better remain on the defensive in the west or start an offensive after the conclusion of the Poland campaign is a matter of politics to a large extent.

"An offensive would be imperative if it is expedient to bring the war to a speedy end. But there is no promise for such a success. The risk and the political effects would not be in harmony with each other. It goes without saying that the defensive is also a test of our nerves as well. Nevertheless, with Poland we have a pawn in our hands, while the enemy still has to procure such a pawn.

"The offensive would be the beginning of the struggle for life or death, and the third parties would have the last laugh. The defensive still leaves us the possibility of a negotiated peace. Pending developments, I believe that the defensive should be maintained.

"Having received information that a general offensive with an invasion of Luxembourg, Belgium, and Holland was being prepared in the beginning or in the middle of November, I submitted a brief memorandum to Mr. von Ribbentrop on 12 October 1939 in which I discussed the military plans for the six winter months from the political viewpoints, and in particular advised against the invasion of the three neutral countries.

"On 12 October we had a conference on this matter during which Mr. von Ribbentrop briefly mentioned the reasons pro and con, but spoke dispassionately, saying that fate must not be provoked, or something to that effect. He also was of the opinion that the Chamberlain speech of 12 October offered a suitable starting point for further peace talks, until the Fuehrer, in the evening, gave vent to an opposite opinion.

"Since I had no discussions any more in the meantime, but received information about the plan of the offensive which became more and more definite, today in Dahlem in the house of the Minister I again led the conversation to this topic and emphasized my previous statements. But I soon found out that Mr. von Ribbentrop was not inclined to go deeper into this matter. He said that my memorandum was a concept which was similar to the terminology of the Anglo-French propaganda which if considered closely did not want us to strike before the spring of 1940, when the full war production of Great Britain would become effective on the Continent. The reproach of being a defeatist sounded again as in the fall of 1939. Mr. von Ribbentrop talked about his responsibility

which I had better leave to him, 'We will not discuss this matter any more.'

"I countered with the remark that I was sorry to hear this because I was in the possession of arguments which were important in my opinion but could not be discussed in such haste of course.

"Mr. von Ribbentrop concluded our conversation with a gesture which unmistakably expressed his desire not to be bothered any longer with this matter."

On 9 January 1940 von Weizsaecker addressed another memorandum to von Ribbentrop regarding Mussolini's letter to Hitler in which he says (*Weizsaecker 371, Weizsaecker Ex. 124*) :

"The Duce does not believe in a victory in the West. Any attempt to force such a decision, in his opinion, will lead to Europe going Bolshevist. He therefore wants Germany not to look for military decisions in the West, but to mature her military aims * * *.

"It goes without saying that the Duce's advice is motivated by Italian egotism, but nevertheless, it is the advice of a friend. If it is rejected the Duce will certainly have freedom of action and wants to have it. His futile warning will serve him then as an excuse with the Western Powers. The Duce's letter clearly indicates a parting of the roads. It must be taken seriously."

In March 1940 he had the discussion with Sumner Welles to which we have already referred.

These documents do not evidence a desire to forward plans of aggressive war, but rather both a desire and a purpose to avert it. Such were his pacific professions, and we now turn to what is claimed to be his affirmative participation in these crimes against peace.

On 8 November 1939 von Weizsaecker and Attolico conferred, and von Weizsaecker reported thus (after referring to the offer of the Queen of Holland and the King of Belgium) (*NG–1727, Pros. Ex. 244*) :

"During the further course of the conversation I told the Italian that at present protests were being made to us by Belgium because of repeated transit flights over Belgian territory; from all these complaints only a single one seemed in my opinion to be justified. On the other hand, however, I continued *as instructed,* we should complain about the repeated violation of Belgian sovereign territory by the Allied air activity. Belgium and Holland would have to consider preserving their neutrality not only with words but with deeds and oppose

English pressure unless both countries want to gain the reputation of exclusively favoring our opponents." [Emphasis supplied.]

Unless otherwise explained, this conference does not indicate an attitude either of helpfulness, understanding, or sympathy toward Belgium or Holland, or any hint to the Italians which they could use to prevent war from spreading to the Lowlands. The assertion by Buelow-Schwante and by the defendant that the former's and von Weizsaecker's influence became the exciting factor of the Dutch and Belgian offers for mediation fails after examination of the evidence.

The next incident is that arising from the inquiries of the Belgian government regarding the invasion documents found on a German airplane which grounded or crashed in Belgium on or about 10 January 1940. The Foreign Office, on von Ribbentrop's orders, tried to conceal the facts. But this action is of no particular significance unless it was a part of a plan to deceive the Low Countries as to Germany's aggressive intentions.

On 15 January 1940, von Weizsaecker reports a conversation with Count Davignon, the Belgian Ambassador to Berlin, in which the latter complained about the violation of Belgian neutrality by German planes; von Weizsaecker said he promised an early reply, not only as to current alleged violations of Belgian territorial rights, but concerning previous complaints. He then proceeded to discuss a series of reports in the Belgian press, all of which he claimed showed a shocking state of excitement and of military activity, which was one-sidedly directed against Germany; that the Ambassador admitted this, but asserted that the military missions were merely preliminary safety measures such as already had been taken by Holland and Switzerland, and gave the reason therefor that everyone in Berlin was speaking of the German invasion of Belgium and Holland, and of the repeated flying of German planes over his country, and of the warnings which had come from Italy. Von Weizsaecker reported that he had replied that Brussels should not be influenced by gossip in the streets, and that English and French planes had been seen at the Belgian frontier and crossed in flight, and finally, "I could not recognize any particular cause for Belgian alarm."

On 16 January 1940 Minister Spaak expressed his apprehensions to the German Minister Buelow-Schwante, in which he made clear that Belgium would resist any violation of its neutrality either by West or East.

On 17 January von Weizsaecker reported a second visit from the Belgian Ambassador in which the latter not only expressed his fears, but mentioned the military measures taken against

Belgians and the military orders found in the airplane heretofore mentioned. Von Weizsaecker reports that he answered that he lacked a reason for such behavior which he considered unjustified and suspicious, and he stated further that as to the captured military documents, "I looked surprised and repeated my remark of the day before yesterday that I knew of this story only through the press."

On 22 January 1940 von Weizsaecker reported this conversation with Attolico, who showed him an article in "Le Temps" dealing with the emergency landing of a German plane near Mecheln, and remarked that this was an important event which von Weizsaecker had not mentioned on the occasion of Attolico's visit the previous week, but as he, von Weizsaecker, did not desire to enter into the subject, he merely said that the story was already making the rounds with the foreign press, and asked Attolico whether he could not tell him why it was that the Belgians were so alarmed a week ago. Von Weizsaecker further reported that he could not determine whether the Italians were informed on this whole question.

The defense submitted Exhibit 142, a certified declaration of the Belgian Ambassador, which contains the following (*Weizsaecker 204, Weizsaecker Ex. 142*):

> "Did the State Secretary attempt to prevent this invasion? It is difficult for the undersigned to make any statement on this subject. At all events, Mr. von Weizsaecker gave the impression that he hoped to play his part in an attempt to prevent an extension of the war in the West. On the other hand, he made no attempt to deceive the undersigned or to relax his vigilance by stating that an invasion of Belgium and the Low Countries was out of the question."

This is an exceedingly cautious and uninformative statement. The prosecution exhibit to which we have referred was offered in evidence on 22 January 1948, and the affidavit of Count Davignon was authenticated on 23 March 1948. In view of the meticulous care with which the case of the defense was prepared, we deem it extremely unlikely that the attention of the Ambassador should not have been called to [NG–2893, Prosecution] Exhibit 247, and inquiry made as to whether he had not received confidential information as to the activities of the feared event and occurrence which had caused such great apprehension on the part of the Belgian Ambassador. It is to be remembered that both von Weizsaecker and Count Davignon testified to the close personal friendship which they felt toward each other.

When Davignon made his final call on the day the German troops initiated their invasion, von Weizsaecker repeatedly tried to convince the Belgian that his government should cease resistance, and gave an emphatic description of the annihilating consequences to Belgium if this was not done. The defendant did not explain his deceptive statements to the Ambassador that he knew nothing of Germany's intention to invade, and his explanations of this threat of dire consequences and annihilation are not only inadequate, but his purported lack of recollection of what he said is unimpressive.

During all this time, as he himself admits, he knew that the invasions were planned and prepared, and waited only the strategic moment for their execution. Were we to judge him only by these things alone we would be compelled to the conclusion that he was consciously, even though unwillingly, participating in the plans. But in determining matters of this kind we may not substitute the calm, undisturbed judgment derived from after knowledge, wholly divorced from the strain and emotions of the event, for that of the man who was in the midst of things, distracted by the impact of the conflagration and torn by conflicting emotions and his traditional feelings of nationality.

This much is clear, that von Weizsaecker advised against the invasions and gave cogent reasons why they should not be embarked upon. His advice was rejected, and this rejection was not the first he had suffered. He had before warned the Western Powers, and unfortunately his warnings were ineffective. He had made suggestions which were or could not be carried out. The course of events had made his prophecies of failure and disaster seem like those of Cassandra. Even a stout heart for a time might fail under these circumstances, and the lethargy of futility take its place. That his opposition revived and that he played a real part in the continuous underground opposition to and plots against Hitler and further forcible removal of that incubus from the scene of action, we have no doubt. Even heroes have their bad days, and while perhaps the defendant cannot be included in that category, he should not be held to a stricter test.

According to him the benefit of reasonable doubt, we are constrained to exonerate him. He did not originate the invasions and advised against them. He warned von Ribbentrop against the western offensives and the utilization of unrestricted submarine warfare. He may have failed to give the Belgians, Dutch, and Italians specific warnings of the coming events, but that seems to be the extent of his misdoing. Under these circumstances we find the defendant von Weizsaecker not guilty with respect to the invasion of the Low Countries.

Yugoslavia and Greece.—On 27 October 1940 Mussolini delivered an ultimatum to the Greek Government and almost immediately thereafter initiated an aggressive war against Greece. This was done without previous consultation with the German Government, although it had strong suspicions amounting almost to a certainty that the invasion was in prospect. Hitler did not interfere, inasmuch as he himself had initiated the Danish and Norwegian aggressions without consulting Mussolini, and felt because of this he should not interfere with the proposed Italian incursion.

The defendants von Weizsaecker and Woermann were advised of Mussolini's prospective operation. The campaign broke down during the fall and winter, and military disaster became imminent. Late in the fall of 1940 Germany commenced to build up large forces in Rumania, first on the pretext that it was sending a military mission to that country in order to train the Rumanian army, and later because of the alleged necessity of protecting Rumania's oil fields and the danger that the British might establish a Salonika front.

From the record it appears that at first, Hitler's Rumanian adventure was part of his plan of aggression against Russia, and that his agreements with Rumania and the dispatch of troop units there was an actual desire on his part to protect his southern flank and his sources, not only of oil, but of food imports. However, as the Italian invasion not only lost impetus, but suffered severe military setbacks, he felt it necessary to come to their support. The alleged presence of British troop units in Greece was but an excuse and not the reason for his action. Reports of the German Military Attaché and of the German Foreign Office representatives in Athens clearly disclose this.

But even had the British rendered substantial aid to Greece, this did not serve as an excuse for Hitler's invasion. Italy was the aggressor. It was a signatory to the Kellogg-Briand Pact, and Britain had the right to come to the aid of Greece while Germany, on the other hand, had no right to come to the aid of the Italian aggressor. Nor is the argument of self-defense available to Germany. No nation which initiates aggressive war can avail itself of the claim of self-defense against those who have taken up arms against the aggressor. The first aggression stigmatizes every other act, either in waging war against or extending it to other countries. The action of Germany in Greece was aggressive and in violation of its treaty obligations, was without justification and in violation of international law.

Von Weizsaecker, on 15 January 1941, informed Draganov of Bulgaria that Germany was in agreement with the Bulgarians'

desire to obtain an outlet in the Aegean Sea approach between the Marica and Struma Rivers, but Bulgaria must declare itself unreservedly willing to sign the Three-Power Pact when requested so to do.

On 2 February 1941 von Weizsaecker informed the Turkish Ambassador that the decisions which the Reich government had taken concerning the safety of the Balkans were "irrefutable." On 10 March he informed von Ribbentrop that during the whole of Draganov's activities in Berlin, the latter never named any territorial aims but those approved by "us," that is, Germany.

Notwithstanding these acts, however, there is no evidence that von Weizsaecker planned, prepared for, or initiated the war, or that he took any substantial part in it. We find that he should be and is found not guilty with respect to the invasion of Greece.

As to Yugoslavia, the story is still shorter. An attempt was made to gain the adherence of Yugoslavia to the Tripartite Pact. Most of these negotiations were carried on by von Ribbentrop personally. The Yugoslavian Government finally agreed to become a signatory to that pact, but thereupon was overthrown by a *coup d'etat* and the new government which took its place rejected the proposed agreement and Hitler decided immediately on an invasion.

From that decision there was no wavering, and von Weizsaecker had no part in making the decisions and no part in implementing them. He should be and is found not guilty with regard to the aggressive invasion of Yugoslavia.

Russia.—On 21 September 1940 von Weizsaecker was informed by Admiral Buerkner of the OKW of Keitel's memorandum of 20 September concerning the military mission to Rumania, which stated that the real tasks, which neither Rumania nor "our own troops" must be allowed to perceive, were—

(a) To protect the oil fields against attack by a third power;

(b) To render the Rumanian forces capable of carrying out certain tasks in accordance with rigid plans developed in favor of German interests; and,

(c) To prepare for the employment of German and of Rumanian troops in the event that a war with Soviet Russia was being *"forced upon us."* [Emphasis supplied.]

On 14 September von Weizsaecker issued a draft of instructions regarding the status of the German military mission to Rumania, and its subordination to the German Minister at Bucharest.

Later, toward Christmas 1940, he was informed by military circles of Hitler's intention to wage a war against the Soviet Union, although he asserts that he received no official information until the late spring of 1941. On 1 March 1941 von Weiz-

saecker informed the Russian Ambassador, as per instructions, regarding the German troop transports to Rumania and of German information regarding British troop movements into Greece; that Turkey would doubtlessly lie low "as we would certainly not turn against her unless she provoked us. I was the more sure of this since our troops would withdraw when the British danger was prevented, of which the Soviet Government was previously informed in January."

Other than exhibits which disclose that von Weizsaecker had knowledge of Hitler's plans to invade Russia, and this he admits, there is no evidence that he took any affirmative action toward initiating, planning, or preparing for the aggression against that nation.

On the other hand, on 28 April 1941 the defendant wrote to von Ribbentrop advising against a German-Russian conflict. He said (*Weizsaecker 227, Weizsaecker Ex. 156*):

> "I can summarize in one sentence my views on a German-Russian conflict: If every Russian city reduced to ashes were as valuable to us as a sunken British warship, I should advocate the German-Russian war for this summer; but I believe that we would be victors over Russia only in a military sense, and would, on the other hand, lose in an economic sense.
>
> "* * * But the sole decisive factor is whether this project will hasten the fall of England.
>
> "We must distinguish between two possibilities—
>
> "(*a*) England is close to collapse; if we accept this (assumption), we shall encourage England by taking on a new opponent. Russia is no potential ally of the English. England can expect nothing good from Russia. Hope in Russia is not postponing England's collapse. With Russia we do not destroy any English hopes.
>
> "(*b*) If we do not believe in the imminent collapse of England, then the thought might suggest itself that by the use of force we must feed ourselves from Soviet territory. I take it as a matter of course that we shall advance victoriously to Moscow and beyond that. I doubt very much, however, whether we shall be able to turn to account what we have won in the face of the well-known passive resistance of the Slavs. I do not see in the Russian state any effective opposition capable of succeeding the Communist system and uniting with us and being of service to us. We would therefore probably have to reckon with a continuation of the Stalin system in eastern Russia and in Siberia and with a renewed outbreak of hostilities in the spring of 1942. The window to the Pacific Ocean would remain shut.

"A German attack on Russia would only give the British new moral strength. It would be interpreted there as German uncertainty as to the success of our fight against England. We would thereby not only be admitting that the war was going to last a long time yet, but we might actually prolong it in this way, instead of shortening it.

WEIZSAECKER

"This position is drafted in very brief form, since the Reich Foreign Minister wanted it within the shortest possible time.

WEIZSAECKER"

Notwithstanding his arguments regarding the necessity of destroying England, his memorandum is a strong argument against the invasion of Soviet Russia. And it is his attitude with regard to this charge in which we are here interested, and not his attitude toward England. In view of the peculiar mentality of von Ribbentrop and the necessity of couching arguments in terms which he would both understand and appreciate, it is quite understandable why sound advice would be coupled with pyrotechnics against a third power, namely, Great Britain. The situation here is different from one where a man argues one way and acts in another. In this case von Weizsaecker not only did not act, but no action would have been effective, and even sound advice was futile.

We have already held that mere knowledge of aggressive war or of criminal acts is not sufficient, but it is suggested that von Weizsaecker should have told the Russian Ambassador that he was aware of Hitler's plans of aggressions against that country. For an abundance of reasons, this cannot be made the basis of a judgment of guilt. We mention but a few. First, he could not talk with the Ambassador except through an interpreter and the hazard that the interpreter might betray him was obviously imminent, and the fatal consequences clear; second, there still remained the possibility either that Hitler might change his mind or that circumstances might arise which would compel him to alter his plans; and third, the revelation of the actual situation to the Russian Ambassador, even if it remained secret, would not cause Hitler to change his plans but would necessarily entail death and suffering to thousands of German youth, themselves innocent of any part in the planning, preparation, and initiating of the aggression. The only course which we think he could follow or wisely attempt was the one he followed, namely, to submit the reasons why the proposed step was likely to be fatal to the German people. His advice was not followed and the failure to follow it brought disaster.

The prosecution insists, however, that there is criminality in his assertion that he did not desire the defeat of his own country. The answer is: Who does? One may quarrel with, and oppose to the point of violence and assassination, a tyrant whose programs mean the ruin of one's country. But the time has not yet arrived when any man would view with satisfaction the ruin of his own people and the loss of its young manhood. To apply any other standard of conduct is to set up a test that has never yet been suggested as proper, and which, assuredly, we are not prepared to accept as either wise or good. We are not to be understood as holding that one who knows that a war of aggression has been initiated is to be relieved from criminal responsibility if he thereafter wages it, or if, with knowledge of its pendency, he does not exercise such powers and functions as he possesses to prevent its taking place. But we are firmly convinced that the failure to advise a prospective enemy of the coming aggression in order that he may make military preparations which would be fatal to those who in good faith respond to the call of military duty does not constitute a crime.

The defendant von Weizsaecker should be, and we find him, not guilty with regard to the aggression against Russia.

United States of America.—On 15 May 1941 von Weizsaecker wrote a memorandum to von Ribbentrop which states as follows (*NG–4622, Pros. Ex. 3590*):

> "Any political treaty between Japan and the United States is undesirable at present. The text of the treaty, however, in its present form would mean that Japan withdraws from us. It would leave us alone on the battlefield against England and the United States. The Three-Power Pact would be discredited. In the concluding sentence of paragraph II the sanctioning of the United States to help England is plainly anti-German (in the English text even clearer than in the German).
>
> "Since the text of the treaty is already in Washington it has already had a damaging effect. One should try to so obstruct it subsequently to such an extent that the treaty will not be concluded. (Definition of the Japanese treaty interpretations, provisions for effectiveness, dependence of the effectiveness of II, III, etc.)
>
> "Should the treaty, despite this, still not be prevented, care must be taken that Japan in reality comes back again in the ranks. The minimum would be that Japan extends its assistance to Germany on the same principles as the United States its assistance toward England."

On 4 September 1941 von Weizsaecker reported his conversation with Oshima, Japanese Ambassador to Berlin. Oshima stated that he had made a report to Tokyo on the subject of relations of Japan-America. Von Weizsaecker states (*NG–4370, Pros. Ex. 396*):

"This opinion of Oshima quite coincides with the one desired by us, so that I actually had little to add. Nevertheless, I have also on this occasion extensively used the ideas from the order cabled to Tokyo of 25 of last month—364 R—and at the end tried to encourage further the somewhat depressed ambassador by telling him I could not at all imagine that in the Japanese nation and in accordance with it also in Japanese politics, there should not, in the end, the military instincts gain the upper hand."

In November 1941 von Weizsaecker prepared a memorandum which became the basis of a Foreign Office telegram to the German Ambassador in Tokyo. He states that the German Military Attaché in Washington reported that (*NG–4371, Pros. Ex. 408*):

"American war policy during the past few months based on the assumption that Japan could be kept out of the war. Only thus is to be explained the division of fleets and base on Iceland, which permanently ties up considerable parts of the fleet in the Atlantic. With every Japanese attack on Russia, China, Singapore, or Dutch Indies, America is immediately confronted with the dilemma of either pocketing an attack on its prestige or saving face by going to war. Dilemma becomes the more difficult as United States entry into war on two fronts impairs supply and possibility of aid to England and not only turns the Pacific but also the Atlantic into war theater, thereby necessitating the splitting up of American fighting forces as well as convoy protection to the Far East for indispensable raw material supply.

"Prior to an American entry into the war the following is to be assured:

"(1) An above-all attitude of Japan,

"(2) The unconditional obedience of Latin-American countries,

"(3) Conclusion of preparations for land and air warfare,

"(4) Complete gearing of war industries,

"(5) Possibility of being decisive in the war.

"Roosevelt's and Churchill's threats addressed to Japan must, as hitherto, not be evaluated as an expression of strength but as an expression of concern. One is of the opinion in America that Japan can be effectively intimidated, if it is threatened

simultaneously from Singapore and Hawaii. American-English press campaign to this effect is in progress. At the same time it is impressed upon Japan that Japan as a friend of America and England will have entirely different prospects than as a friend of Germany. Fuehrer as master of the British Empire, the Netherlands, and Russia would be a much more dangerous opponent for Japan than the British Empire or the United States. As a matter of fact, England, the United States, and Russia, want nothing more than peace and friendship in the Pacific with full regard for Japanese interests. American tactics, as in the past 2 years, aim to deceive the opponent and to camouflage its own weakness.

"Please use foregoing report of military attaché in connection with the above-mentioned cable."

Thus, it will be seen that von Weizsaecker was anxious not only that Japan remain an active member of the Tripartite Pact, and that he favored Japan's expansion and aggression to the southeast, namely, toward Singapore, Burma, and the Dutch Indies, and also against Russia, but that he was aware that this might bring in its train intervention on the part of the United States. But this does not establish that he favored or recommended an aggressive war against the United States. Moreover, the record discloses that Japanese action was not induced by German prompting, but by its own evaluation of the situation and its own interests, and that the attack on Pearl Harbor and the Philippines was a surprise to Hitler, the Foreign Office, and to von Weizsaecker.

The German decision to declare war on the United States was not made by or on the advice of von Weizsaecker. Thus, the evidence does not establish von Weizsaecker's guilt, and we exonerate him and find him not guilty so far as aggressive war against the United States of America is concerned.

KEPPLER

The defendant, who was a manufacturer, became acquainted with and a follower of Hitler as early as 1927 and acted as the latter's economic adviser. He was a convinced Nazi and still retains a high degree of loyalty toward Hitler believing, as he says, that during the early years at least, Hitler's program was well-intentioned and was fraught with good for the German people, but as the years passed, Hitler, due to illness and strain, changed. When Goering became Plenipotentiary for the Four Year Plan, Keppler lost much, if not all, of his influence on eco-

nomic matters, at least from a political standpoint, although he remained important in certain fields such as synthetics, fats, oils, and other materials.

In 1936 Keppler was given full authority over the direction of the Nazi Party's activities in Austria. From that time on he, as Hitler's direct representative, exercised these functions. The Austrian Anschluss had long been the subject of Hitler's plans of expansion. No secret was made of it. When the Nazi Party expanded into Austria and while outwardly independent of the Reich Nazi Party, it was in fact wholly its creature. Its members and officers took orders from Hitler and held office only so long as they obeyed Hitler. After the unsuccessful Putsch in 1934, in the course of which Dollfuss was murdered, the Party was outlawed in Austria and, as the defendant and his witnesses claim, its members were subjected to discrimination and at times to imprisonment. But it persisted as an underground movement with support, financial and otherwise, from the Nazi Party in Germany. A party which commences an armed revolt and assassinates a head of a state can hardly be regarded as a persecutee if the government thus assaulted takes measures to prevent similar occurrences in the future, and that in this case a recurrence was reasonably to be expected there can be no doubt.

One of the leaders of the Austrian Nazi Party was Leopold, who was strongly of the opinion that forcible measures should be taken.

However, until Hitler felt sure that forcible action against Austria would not bring down upon him Italy as well as the other Western Powers, Leopold's attitude constituted a hazard. Keppler was appointed among other things to prevent the occurrence of that state of affairs. This he did, and Leopold was removed from the scene of action.

During 1937 the defendant Keppler and his assistant, the defendant Veesenmayer, made several trips to Austria, consulted with Party leaders, and directed the activities of the Party there. As a result of Schuschnigg's Berchtesgaden conference with Hitler of 12 February 1938, the Austrian Premier was compelled to appoint Seyss-Inquart a member of the Austrian Cabinet as Minister of the Interior and head of the Security Police, who with others bored from within, and continually increased pressure was brought by Germany and the Party on him and his government until on 9 March 1939 Schuschnigg determined to hold a plebiscite to determine the question of Austria's independence.

This to Hitler was a red flag, and events marched rapidly. Keppler was in Vienna on that date and was immediately called to Berlin, reaching there on 10 March. He there made a report

to Hitler, and after this conference, on Hitler's order, he returned to Vienna. There is a dispute in the testimony as to the exact hour of his arrival and as to whether he delivered or reiterated the German ultimatum, namely, that Schuschnigg must resign and Seyss-Inquart be appointed in his place or the German Army would march in. President Miklas testified that Keppler delivered such an ultimatum to him, and Hornbostel of the Austrian Foreign Office testified that during that day he received reports not only of Keppler's and Veesenmayer's arrival at Vienna, but that Keppler had delivered an ultimatum to the Austrian President. We believe and find that he did so, although there is reasonable doubt whether this took place before or after General Muff, German Military Attaché at Vienna, had delivered a like one. But we deem it immaterial which ultimatum was delivered first.

The defendant would have us believe that he acted in a vacuum in this matter and had neither knowledge of nor activity in the unwarranted interference in Austrian affairs. His story, however, is quite incredible. He returned to Berlin to report, and after that, as he was ordered, he flew back to Vienna. He was there during the crucial hours. He admits conferring with Miklas and in fact the record of his telephone conversation with Goering so states. Keppler was in Vienna to do Hitler's will, and it is beyond the realm of possibility that he was not informed before he left Berlin precisely what was to occur and what part he was to play.

Neither Hitler nor the Third Reich had the slightest justification or excuse to interfere in Austrian affairs, particularly in view of the provisions of the Treaty of Versailles and the agreements which the Third Reich entered into with the Austrian state. Hitler's actions became aggressive as soon as he felt that it was safe to do so and as soon as it became clear that there might be a plebiscite which possibly would upset his plans. Resistance by Austria was useless and hopeless, and therefore none was offered when the Wehrmacht poured over the borders and took possession of the Austrian state. But before the army marched in, armed bands of the SS and other Nazi organizations under German direction took possession of the government, arrested its leading officers, and patrolled the streets. In the unlawful invasion of Austria Keppler played an important part, and we find him guilty under count one.

Bohemia and Moravia.—According to the defendant's statement, in December 1938—the exact date being uncertain—Hitler ordered Keppler, according to his statement, to take interest in Slovakian affairs. We think it quite likely that this was due to Hitler's fears that the tension between the Czechs and the Slo-

vaks, which had apparently lessened as can be seen from Hencke's report of 28 December 1938, would disappear. Such a condition was highly unsatisfactory to Hitler's plans to destroy Czechoslovakia. On 7 March 1939 Keppler was present at the Goering conference with Tuka, Durcansky, and other Slovaks. On 11 March 1939 Keppler went to Pressburg, Bratislava, and negotiated with Sidor.

On 12 March Altenburg reported to von Ribbentrop that Keppler had telephoned that the situation in Slovakia was "in a mess," that Seyss-Inquart and Buerckel had been fooled by the people on the other side, and Sidor had apparently been bribed by the Czechs, and one couldn't do anything with him; that at present there was calm in Bratislava, and it would be rather difficult to find new starting points; and that Durcansky's proclamation had indiscreetly already reached foreign correspondents. On the night of 12–13 March 1939 Tiso was visited, and decided to fly to Berlin, and left Vienna at 1 o'clock in company with Keppler. He was received by Hitler at 1915 hours on 13 March, and in the course of that conference Hitler stated that he had been disappointed by the Slovakian attitude and had been faced with the difficult decision whether or not to permit Hungary to occupy it; that he sent Keppler as his Minister to Pressburg [Bratislava], to whom Sidor had declared that he was still a soldier of Prague and would oppose the separation of Slovakia from the Czechoslovakian nation. Hitler stated that he permitted Minister Tiso to come to Berlin in order to make the question clear in a very short time; that it was a matter of indifference to him what happened in Slovakia; and that the question was whether Slovakia wished to conduct her own affairs or not, but he, Hitler, did not wish anything from her; that it was not a question of days but of hours. Hitler stated that if Slovakia wished to make herself independent, he would support this endeavor and guarantee it, and he would stand by his word as long as Slovakia would make it clear that she wished her independence, but if she hesitated or did not wish to dissolve the connection with Prague, he would leave the destiny of Slovakia to the mercy of events for which he was no longer responsible. Tiso replied that Hitler could rely upon Slovakia, but he wished to be excused for the reason that under the impression made by Hitler he could not clearly express his opinion at that moment or could hardly make a decision; that he wished to withdraw with his friend and think the whole question over at his ease, but that they would show that they were worthy of Hitler's care and interest for their country.

On 14 March 1939 Tiso flew back to Bratislava, and Slovakia declared her independence.

On 15 March Hitler summoned the aged and ailing Hacha, President of the Czechoslovakian Republic, to Berlin, and at an early hour of the morning, after threats that Prague would be bombed, Hacha was forced to submit. But German troops had already marched into Czechoslovakia hours before Hacha succumbed to Hitler's threats. The German troops met with some resistance from Czechoslovakian forces, but the Czechs were speedily overcome and the remainder of the Czech state fell. Keppler was present at Hitler's headquarters during the Hacha conference, but claims that he was only there to listen.

The defendant professes to have known nothing about Hitler's plan, although in one of his statements he admits that he thought something of that nature might occur. We are unable to believe him. He played an important part in this matter. The separation of Slovakia from the Czechoslovakian state was an important and an integral part of Hitler's plan of aggression.

Nor did he go to Czechoslovakia merely as an observer. In his own affidavit he admitted that he was assigned in March 1939 to negotiate and conclude a treaty of friendship and defense with Slovakia. We find that the defendant had knowledge of Hitler's plan for aggression against Czechoslovakia, knew that it was indefensible, and that he willingly participated in it. We find him guilty under count one in connection with the aggression against Czechoslovakia.

WOERMANN

In addition to the general charges contained in count one, it is specifically alleged that the defendant Woermann and other defendants named "as high officials of the German Foreign Office played dominant roles in the diplomatic plans and preparations for invasions and wars of aggression, and later participated in the diplomatic phases of the waging of these wars." It is further specifically alleged that members of the German Foreign Office, including the defendants Woermann and von Weizsaecker, were secretly preparing the groundwork for aggression in Czechoslovakia by providing political, military, and financial assistance to the Sudeten German Party, under the leadership of one Konrad Henlein, and inciting that movement to lodge continual demands for the complete separation of the Sudetenland from the Czechoslovakian Republic.

It is further asserted that the defendant Woermann, together with other defendants, participated in a series of diplomatic and

political moves against Poland whereby, in disregard of recent assurances and agreements, the return of Danzig and the Polish Corridor was demanded as a pretext for aggression. Polish counterproposals for the peaceful settlement of German claims were rejected, and an energetic program to mobilize potential allies in the German cause of aggression and to neutralize France and Great Britain as possible opponents was undertaken. It is asserted that the "political propaganda and diplomatic blueprint for this war of aggression was carefully designed" by Woermann and other defendants with a view to shifting the apparent responsibility for the war to the victim. It is apparent that border incidents were staged and alleged acts of terrorism committed by the Poles against German nationals and racial Germans were fabricated and publicized. It is further asserted that all attempts by France, Great Britain, the United States, and other nations to persuade the German Reich to agree to a peaceful settlement of the dispute with Poland were rejected. It is then asserted that in the early hours of 1 September 1939, Germany launched this war of aggression which later involved Great Britain, France, and a great part of the world.

It is further asserted that defendant Woermann and others also participated in the preparation of the aggressions against Norway, Denmark, the Netherlands, Belgium, and Luxembourg, and it is further asserted that defendant Woermann and others participated in the preparation and planning of the attack against the Union of Soviet Socialist Republics on 22 June 1941. It is asserted that Woermann and others, through diplomatic efforts, secured the military support of Rumania and Hungary for such venture. It is further alleged that Woermann and other members of the German Foreign Office, from early 1941, made continuous diplomatic efforts to induce Japan to attack British possessions in the Far East. It is further alleged that Woermann and other defendants, as leading officials of the German Foreign Office, participated in the political development and direction of the occupied territories, particularly those territories wherein puppet governments under the domination of the German Foreign Office had been installed. By the maintenance of continuous diplomatic pressure, intimidation, and coercion, the puppet and satellite governments were compelled to support Germany in the course of its wars of aggression. Further, they participated in the partitioning of certain of the occupied territories, including Yugoslavia, and in the evolution of plans for the final integration of the occupied countries into the orbit of the German Reich after the cessation of hostilities.

Defendant Woermann was Ministerial Director and chief of the Political Division of the Foreign Office in Berlin with the title of Under State Secretary from April 1938 to April 1943.

This defendant testifying before the Tribunal on 6 July 1948 stated (*Tr. p. 11063*) :

> "I also did and do consider myself responsible for what happened in the Political Division of which I was head even when I did not approve or did not know the individual cases."

The defendant did seek to show that the office of chief of Political Division had decreased in significance so that during the time that he was head thereof it was an office of secondary importance. This however does not square with the facts. The record is replete with evidence of incidents showing that during the times in question Woermann was charged with and energetically carried out important duties and assignments which often involved the exercise of a wide discretion and had a bearing on the plans and policies which were being considered or were in the process of execution.

The defendant also sought to show that he was on unfriendly terms with his chief, von Ribbentrop, from 1938 to 1943, and in his testimony before this Tribunal on 6 July 1948 he alluded to various incidents to support such claim. This, however, is not especially significant for the fact remains that he actually stayed in office under von Ribbentrop from 1938 to 1943—five eventful and critical years. Apparently their differences were not so fundamental as to have prompted Woermann to obstruct the plans or wishes of von Ribbentrop or to cause Woermann to fail in satisfactorily complying with von Ribbentrop's wishes in connection with the carrying out of the aggressive plans and policies of the Nazi regime. That Woermann did actively participate in carrying out the criminal plans and policies of the Reich seems to be amply borne out by the testimony.

It appears that although von Ribbentrop, according to the statement of defendant, had indicated to the defendant that he did not desire to "receive any unsolicited advice" von Ribbentrop did, on 24 July 1941, send a secret wire to Woermann wherein he directed defendant Woermann to carry on a propaganda campaign "on an exact study of the weak spots of the American or English policy."

The evidence discloses that the political division which was under Woermann's charge, as above indicated, gave close attention to the carrying out of von Ribbentrop's wishes in this matter, for in November 1941, Woermann gave detailed instruction to officials in his department with respect to propaganda to be

employed. Woermann also sent a secret code telegram to various German missions abroad which contained instructions for putting America in a bad light by means of propaganda therein suggested. The foregoing is of significance as indicating that wide discretionary power was in fact vested in Woermann's office and that he exercised the same to an extensive degree. Reference hereinafter made with respect to the charges against Woermann as they relate to the various countries involved further indicate the wide discretionary power vested in Woermann.

We come now to a consideration of the charges against Woermann with respect to aggressions against Czechoslovakia (Bohemia and Moravia). It appears that on 19 September 1938 Woermann made a series of suggestions with respect to the disposition to be made of the balance of Czechoslovakia after the Sudeten German question had been disposed of. It also appears that on 5 October 1938 Woermann submitted a memorandum to von Ribbentrop in which he made detailed suggestions with respect to forthcoming discussions between Hungary and Czechoslovakia. It further appears that on 12 November 1938, Woermann sent a memorandum to defendant von Weizsaecker with respect to the Carpatho-Ukrainian problem. In November 1938 we find Woermann attending a meeting of the Reich Defense Council at which time Goering stated that "it was the task of the Reich Defense Council to correlate all the forces of the nation for accelerated building up of the German armament." Woermann made a long memorandum relative to this meeting for von Ribbentrop. On 23 November 1938 we find the defendant submitting a report to von Ribbentrop relating to a conference which Woermann and General Keitel had had with respect to the reorganization of the Czech Army. It further appears that Woermann compiled lengthy notes for an anticipated conference relating to a proposed friendship pact between Germany and Czechoslovakia, which notes were submitted to von Ribbentrop. It appears that during this period Woermann was aware of the fact that the Reich was subsidizing elements in Czechoslovakia who were seeking help from Germany with a view to inducing Slovakia to break away from Czechoslovakia. It further appears that after the invasion of Prague, 15 March 1939, Woermann's division sent a wire to Ritter, who was then in Prague, instructing the seizure of the cipher office and all material belonging to it in the Czech Foreign Office. The foregoing evidence with respect to Woermann's activities in connection with Czechoslovakia substantiates the claim that his office was not without considerable authority and power in the shaping of policy in many matters. Such evidence does not adequately support the claim that with respect

to the plans for aggression against Czechoslovakia the defendant did in fact play a significant role. The evidence would indicate that he was advised of what was transpiring. The evidence does not indicate, however, affirmative acts on his part or such contributions to the plan or the execution thereof as to justify finding him guilty with respect to the aggression against Czechoslovakia.

We come now to a consideration of the charges against Woermann with respect to the aggression against Poland. It is to be observed that on 4 May 1939 Woermann sent a secret telegram to the German Consulate in Bratislava, giving agenda for a military conference to be held between the Slovakian authorities and the Germans. This was obviously a preparation pointing toward Poland, and the defendant in his examination before this Tribunal, while not admitting it to be such, did admit that the Polish question had then come into the foreground. It appears that on 11 May 1939 Woermann transmitted a written order to the German Ambassador in London calling attention to the fact that the "persecution of all classes belonging to the German minorities in Poland, especially in the former Prussian provinces, has for some considerable time been on the increase." He requested in such communication that copies of certain reports inclosed by him, as to such anti-German measures and methods, and further reports of like nature which would in the future be submitted, should be made use of in contacts with the British Government.

On 8 July 1939, Woermann sent a telegram to a number of German foreign missions, requesting that they use certain language and representations with respect to Poland. On 22 August 1939 a memorandum was sent from the Political Division (Woermann's division) setting forth the policies to be followed with respect to England, France, and ten other countries, in case of a Polish-German conflict. The memorandum goes into comprehensive detail of the steps to be taken and representations to be made, as to those countries. In discussing this document during the course of examination before the Tribunal the defendant indicated that he could not remember it, but stated, "some of the things it contains, however, certainly came from the Political Division."

On 21 August 1939 Legation Councillor Heyden-Rynsch and a subordinate of Woermann submitted a memorandum to Woermann for his decision with respect to the measures which the High Command of the Armed Forces (OKW) would institute on the date preceding the invasion of Poland, such measures being news black-outs, closing of the frontier, etc. It appears that on 23 August 1939 Woermann took a very decisive and affirmative step with respect to the Polish aggression in that he sent a top secret telegram to the German Legation in Bratislava, advising

the Slovak Government of reports to the effect that Polish operations against the Slovak border might be expected at any time, and that, therefore, to protect Slovakia against surprises, the German Government was requesting the Slovak Government to agree that the commander in chief of the German army might avail himself immediately of the Slovak Army, for the protection of Slovakia's northern border, and that the commander in chief of the German air force be permitted to use the Zipser-Neudorf airfield and, if necessary, that he be permitted to issue a general order to the Slovak air force, forbidding all aircraft to take off. In return for the above "cooperation" requested, the Germans would be willing, first, to safeguard the frontier against Hungary; second, to effect the return of the border territory ceded to Poland in the fall of 1938, in the event that Poland waged war against Germany; and third, to give assurances that, in case Poland waged war against Germany, the Slovak armed forces would not be used outside Slovakia. The wire stated:

> "I beg to arrange that the Slovak Government give its assent to above-mentioned measures immediately and without loss of time."

Woermann, on the stand, stated that the document "shows that it was not a matter of offensive, but of defensive measure." In view of conditions then obtaining in Slovakia, it was ridiculous to speak of Poland waging war against Germany, and Woermann's attempted explanation becomes farcical. On 28 August 1939, Woermann wrote a secret memorandum stating that Legation Councillor Hoffmann had, on 27 August, called from Bratislava, informing "us" that the Slovak Cabinet had accepted the German request to put all territory at German disposal for the deployment of German troops. The defendant Woermann, on examination on 9 July 1948, stated that when war did break out on 1 September 1939, German troops actually invaded Poland through Czechoslovakia.

It appears from the evidence that the so-called border incidents were being used by Woermann to put the responsibility for the outbreak of the war on Poland. It is signficant that on 25 August 1939 defendant Woermann sent a circular telegram to German missions in England and France requesting that all Reich Germans be advised to leave the country by the fastest available means. It further appears that on 28 August 1939 the High Command of the German Navy arranged for the return of all German merchant vessels at foreign ports to home ports, which order was to be transmitted through a telegram bearing Woermann's signature and was to be sent to German missions

abroad. It is noteworthy that when Germany finally issued the so-called White Book dealing, among other things, with the war on Poland, defendant Woermann transmitted such White Book to German missions abroad through a circular letter of 7 September 1939. Such letter is in evidence. This circular letter reveals the diplomatic tactics employed and in which Woermann participated in connection with the aggression against Poland. It may be noted therein that one of the methods was to blame England, and that efforts had been made to neutralize Great Britain and France with respect to the Polish matter. Defendant Woermann transmitted a telegram to the German Ambassador in Moscow on 3 September 1939, the contents of which also are significant in revealing the tactics used preparatory to the Polish invasion. It is obvious that defendant Woermann did not in fact believe the representations made in such communications. It also appears that he did not believe the representations which he was making prior to the launching of the invasion of Poland. In testifying before this Tribunal on 9 July 1948, he was asked the following question with respect to the war against Poland (*Tr. p. 11522*):

"Q. In your opinion, at that time what nation or group of nations was responsible for the outbreak of this war?"

The defendant answered:

"According to my innermost conviction I held the opinion that a great part was to be attributed to Hitler, but not the exclusive responsibility."

During said examination reference was also made to the following (*Tr. pp. 11522–11523*):

"Q. In this telegram you stated that the full responsibility was on England for the outbreak of the war. Was this theme to serve more or less as official guidance for the Moscow Embassy in their official conversations?"

To this question the defendant answered, "Yes."

Further proof of the fact that defendant knew the criminal nature of the aims of the German aggression against Poland appears from a telegram sent by him to the German Embassy at the Vatican on 13 October 1939. In this telegram he states in part:

"There is no question of a return to Poznan in the case of Cardinal Hlond, who is a fierce Polish nationalist. Poznan will in the future undoubtedly form part of the German Reich."

Finally on 6 October 1939, and after Polish military resistance had effectually been crushed, Hitler made a gesture of a peace offer to the Western Powers. On 18 October 1939 defendant Woermann sent a circular telegram to a number of German missions abroad, wherein he instructed such missions as to the line to follow in discussions with respect to such peace offer. In this letter Woermann calls attention to the fact that when the Finnish Foreign Minister had requested the German Minister at Helsinki to inform him, before his departure for Stockholm, whether any other solution for ending the war could be suggested from the German side, the Legation at Helsinki had been given the telegram from the Reich Foreign Minister (*NG–5479, Pros. Ex. 3667*):

> "I request you to state in reply to the question of the Finnish Foreign Minister that Mr. Chamberlain has rejected in the most shameless manner the Fuehrer's generous peace offer, and that the matter is now closed as far as we are concerned. I request you not to give any further explanations in the matter. End of instructions to Helsinki. Request that if necessary, you use similar language there.
>
> WOERMANN"

The following postscript appeared on said telegram:

> "Berlin, 18 October 1939. Foreign Office. Pol. II 4064 Statement IV. I enclose for your information copy of instructions sent by wire to a number of German missions abroad."

The foregoing references to the evidence adduced in this case, with respect to Poland, would seem to leave very little doubt as to the participation of Woermann in the diplomatic preparations for, and in the execution of the aggression against Poland.

We come now to the question of the charges against Woermann with respect to the aggression against Denmark and Norway. It is the opinion of the Tribunal that the evidence with respect to the charges against Woermann in this connection is meager and unimpressive. It does not deem that the evidence with respect to these two countries would justify a finding of guilt against Woermann.

We come next to the charges with respect to the Netherlands, Luxembourg, and Belgium. It appears from the evidence that, early in November 1939, Woermann was the recipient of official information indicating German troop concentrations on the Belgian and Dutch frontiers. It also appears from the evidence that Woermann, during the same month of November, was advised of the violation of Holland's neutrality by German aircraft.

On 13 January 1940, Woermann submitted a memorandum to defendant von Weizsaecker, conveying the information that the

Belgian Ambassador desired to call on the State Secretary in connection with the continued violations of Belgian territory by German aircraft. He alludes to the fact that the Belgian Ambassador had complained, but formal complaints had been unanswered. Woermann concludes this communication by stating, "the Luftwaffe operational staff has been requested to give us a plausible explanation for Belgian consumption." It should be noted in this connection that Belgium, at this time, was a neutral country. The defendant admitted in his examination that the Mecheln incident, which involved the landing of German aircraft near Mecheln in Belgium, and of which the defendant learned in January 1940, gave him a "pretty strong hint" that Germany would attack France "and that this attack would be launched through Belgium and Dutch territory."

It appears that Woermann was advised about the Venlo incident. He admits that "it was, of course, somewhat remarkable that Ribbentrop gave instructions to the officials of the Foreign Office concerned, including myself, that inquiries from the Dutch Government were to be answered to the effect that the case had not yet been cleared up." It appears from the testimony that on 10 May 1940, the day of the beginning of the military operations against Belgium, Holland, and Luxembourg, Woermann was instructed to come to the Foreign Office at 5 o'clock in the morning, to be available for a conversation with the Luxembourg Chargé d'Affaires. It was during this meeting that a copy of the German declaration of war was handed to such Chargé d'Affaires by Woermann after the military operations had, in fact, been started.

A memorandum dated 16 May 1940 written by Woermann for the State Secretary states (*NG–5473, Pros. Ex. 3669*) :

> "Today I told the Luxembourg Chargé d'Affaires who had called upon me after previous announcement that we now considered Luxembourg an enemy country, and that therefore he would have to leave. The rest will be settled by the Protocol Division."

While the evidence hereinbefore referred to would indicate that defendant Woermann was not without knowledge as to the criminal plans of the Reich with respect to Holland, Belgium, and Luxembourg, it does not appear that he took part in the initiation or assisted in the formulation of the plans or took any affirmative action for the consummation of such plans. We will not therefore predicate a finding of guilt against defendant Woermann on account of the alleged aggression against the Netherlands, Belgium, or Luxembourg.

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With respect to the charges against Woermann in connection with the aggression against Greece, it does not appear that the evidence sustains the charges. It appears from the evidence that Woermann had knowledge of the contemplated Italian invasion of Greece, and it appears that Woermann, upon the instructions of the Reich Minister for Foreign Affairs, avoided meeting the Greek Minister who apparently was seeking information with respect to said matter from the German Foreign Office. A consideration of all the evidence adduced with respect to the charges against Woermann in connection with the aggression against Greece does not satisfy the Tribunal beyond reasonable doubt that Woermann's acts in connection therewith constitute such participation as to render him criminally liable therefor.

The Tribunal considers the evidence with respect to the charges against defendant Woermann with respect to Yugoslavia as being entirely inadequate to sustain a finding of guilty. It does appear that Woermann was in the possession of information with respect to activities which would indicate that aggression against Yugoslavia was being contemplated. The evidence, however, does not show that Woermann either initiated or implemented the plans for such aggression.

We come now to the defendant's participation in the aggression against Russia. The Tribunal has examined the evidence with respect to these charges and does not believe that it justifies a finding of guilt against defendant thereunder. Many of the exhibits were of an informational character advising Woermann of what was transpiring. That the plans originated from him or were subsequently furthered or implemented by him, or that he assisted materially in the carrying out of such plans has not adequately been proved to justify a finding of guilt against defendant on this charge.

On the evidence adduced with respect to the charges against Woermann in connection with the aggression against Poland, the Tribunal finds the defendant guilty under count one.*

RITTER

The defendant Ritter joined the Foreign Office prior to 1911 and except for the period from 1914 to 1922 remained in that ministry. In 1937 he became Minister to Brazil and was recalled in 1938. He then received the title of Ambassador for Special Assignments. In October 1940 he was appointed liaison officer between the Foreign Office and Field Marshal Keitel of the Wehrmacht, which office he held until the fall of 1944.

* The Tribunal, with presiding Judge Christianson dissenting, set aside this conviction by an order of 12 December 1949. See section XVIII D 4.

There is no evidence that he took part in or was informed of any of Hitler's plans of aggression. While his position as liaison officer between von Ribbentrop and Keitel was one of substantial importance, and his efforts undoubtedly contributed to the waging of these wars, there is no proof that he knew that they were aggressive. Such knowledge is an essential element of guilt. In its absence, he should be, and is acquitted under count one.

VEESENMAYER

The defendant Veesenmayer, until long after the last of Hitler's aggressions, occupied a minor position in the Keppler office, during which time, however, he received several assignments which dealt with foreign political developments. He accompanied the defendant Keppler to Austria on the latter's assignment to handle the Austrian situation up to the Austrian Anschluss, and was sent to Danzig prior to the invasion of Poland.

There is no evidence that he had any knowledge of Hitler's aggressive plans, and it is most unlikely that one holding such a minor position would have been informed of them.

He should be, and hereby is acquitted under count one.

LAMMERS

In addition to the general charges made against all defendants named in this count, many specific allegations are directed therein against the defendant Lammers. These are to the effect that Lammers, with other defendants, was an active participant in Hitler's seizure of power, in that they marshaled the financial, political, psychological, and propaganda support necessary for its success; that Lammers, with other defendants, cloaked the criminal activities of the NSDAP with a semblance of legality; that the defendant Lammers together with the defendant Dietrich coordinated a series of laws and decrees completely centralizing the control of the machinery of the German Government in the hands of the Third Reich; that he participated in the incorporation of conquered territories into the German Reich and in the administration of the incorporated and occupied territories; that he, in the furtherance of the planning and preparation for aggressive war, coordinated at the highest level the total mobilization of the economic, financial, administrative, and military resources of the Third Reich; that he signed laws and decrees including, among others, the Reich Defense Law, decrees creating the Secret Cabinet Council and establishing the Ministerial Council for the Defense of the Reich, and the decree whereby Hitler assumed

personal command of the Wehrmacht; that he further effected total mobilization by participation in meetings of the Reich Defense Council, the Reich Defense Committee, the General Council for the Four Year Plan, and the Ministerial Council for the Defense of the Reich whereby the military, economic, financial, agricultural, and rearmament phases of mobilization were accomplished; that he resolved jurisdictional problems and conflicts as to the respective spheres of competence in mobilization schemes of various supreme Reich authorities, and received reports regularly from the Plenipotentiary General for Economy, from the Plenipotentiary General for Administration, and the Plenipotentiary General for the Four Year Plan; that by virtue of the aforesaid activities and otherwise, the defendant Lammers synchronized the economic, financial, military, and administrative preparations with the general program of aggression; that Lammers, together with the defendants Meissner and Stuckart and others, accompanied Hitler to Prague when German troops marched into Bohemia and Moravia; that the defendant Lammers with others participated in the secret preparation for aggression against Norway; that a Fuehrer decree was signed by the defendant Lammers appointing Reichsleiter Rosenberg commissioner for the centralized control of problems relating to the Soviet Union and other eastern territories; that Lammers signed, among others, the laws uniting Austria, the Free State of Danzig, Memel, Eupen, Malmedy, and Moresnet with the German Reich, the decree appointing the Reich Commissioner for Austria, and legislation extending German civil administration to Austria, the Sudetenland, and the eastern territories (West Prussia and Poznan) ; that he was responsible for the over-all coordination of the incorporation of these territories and participated in the appointment of administrators for the performance of the administrative tasks involved. He participated in the formulation of the law of 13 March 1938 which united Austria with the Reich; that in setting up German administration in Austria, he drafted and signed decrees which introduced German law and its enforcement by the Gestapo and SD, the Nuernberg Racial Decrees, and the Military Service Law; that he participated in the formulation of the laws incorporating into the Reich the Sudetenland, Memel, Danzig, the eastern territories (West Prussia and Poznan), and Eupen, Malmedy, and Moresnet, and in plans for the incorporation of French territory; that the defendant Lammers signed the legislation establishing the Protectorate of Bohemia and Moravia and the authority of the German Reich to legislate in the Protectorate; that he also signed laws extending German administration to the Government General and to the occupied eastern terri-

tories, and signed legislation appointing administrators in the Protectorate, the Government General and other occupied territories, including the appointment of Goering as Plenipotentiary of the Four Year Plan in charge of the economic exploitation of the U.S.S.R.; that he was further responsible for coordinating with the supreme authorities policies initiated in the occupied territories; and that he was actively engaged in the direction and administration of these territories.

There is much evidence in the record which clearly shows that the defendant Lammers, as Reich Minister and Chief of the Reich Chancellery, occupied a position of influence and authority through which he collaborated with and greatly helped Hitler and the Nazi hierarchy in their various plans of aggression and expansion. In our treatment of other counts herein, particularly count six, we have called attention to evidence which indicates that Lammers held and exercised wide discretionary powers. The evidence herein alluded to in our treatment of the charges against Lammers under count one also demonstrates the exercise of discretion and power by Lammers in the formulation and furtherance of Nazi plans and acts of criminal aggression.

It appears from Lammers' own testimony before this Tribunal on 9 September 1948 that as early as 1936 he was called in by Hitler and Goering in connection with the institution of the Four Year Plan. While he disclaims having drafted the provisions of the Four Year Plan, he admits "on the whole it was most comprehensive in its wording, and I edited the draft in some form or other outside of the conference that took place between the Fuehrer and Goering; that continued in conference." While he denies having contributed anything of decisive importance to this very important plan, the fact that he was called in by the principal architects of the scheme indicates graphically how dependent they were upon him for the proper formulation and efficient implementation of that and following schemes, and it appears that following this event, on countless occasions of great importance, he was instrumental in translating into decrees and ordinances the wishes and plans of Hitler and Goering in connection with the Nazi program pertaining to aggression against other countries.

It appears that on 22 October 1936 Goering issued a decree which was designated as "Decree on the Execution of the Four Year Plan." This decree created a committee of ministers who were designated as lesser council ministers, and who were to collaborate in the making of "fundamental decisions." On such committee were placed the Reich Ministers of War, Finance, Economics, Food, Prussian Minister of Finance, Reich Minister Kerrl, Dr. Ing. Keppler, who was general expert for the general

procurement of raw and synthetic materials, and *the State Secretary and Chief of the Reich Chancellery,* who was, of course, defendant Lammers. It appears that subsequently Lammers' subordinate, Willuhn, became a member of the General Council so that he could inform defendant Lammers "at any time of the measures we have introduced." From the evidence in the record it is clear that the General Council to which we have made reference became a very important and active agency for certain phases of planning in connection with subsequent invasions and other aggressions.

Under date of 4 September 1938 there was issued the so-called Reich Defense Law which was signed by Hitler, Goering, Hess, Frick, Walther Funk, von Ribbentrop, Keitel, and defendant Lammers. It is significant that in a note appended to the law on said date, which note was signed by Hitler, and Lammers as Reich Minister and Chief of the Reich Chancellery, it was provided that the publication of the so-called Reich Defense Law, which had been on said day signed, should be suspended. Lammers on the witness stand could make no satisfactory explanation for the secrecy placed upon the decree thus made. It appears that the secrecy limitations on the said law were lifted by Hitler late in 1939. The defendant Lammers testifying before the Tribunal on 22 September 1948 professed to have learned this only from the minutes of a meeting in which Goering had announced that the secrecy no longer applied. It is significant that defendant Lammers played an active role in this defense council, in connection with other high representatives of the Reich. It appears that a Reich Defense Committee was set up for the purpose of preparing decisions for the Reich Defense Council and otherwise facilitating the work of the council and coordinating its work with the armed forces, the Party, and principal Reich authorities. Such Reich Defense Committee was composed of the High Command of the Armed Forces (OKW), the deputy of the Commissioner for the Four Year Plan, and the leading staffs of the Plenipotentiary for Reich Administration (GBV), and the Plenipotentiary for War Economy (GBW), and Reich defense officials. Lammers managed to have his ministerial director, Kritzinger, made a permanent representative on such Reich Defense Committee. The defendant's efforts to minimize the work of the Reich Defense Council is unworthy of consideration. It appears that at the first meeting of the Reich Defense Council, which was held 18 November 1938 and following the Pact of Munich, and at which, according to the memorandum relating to said meeting which is in evidence, "all Reich ministers and state secretaries, with a few exceptions, were present" as were also the com-

manders in chief of the army, the navy, and the chiefs of the general staffs of the three branches of the armed forces, SS Gruppenfuehrer Heydrich, the president of the Reich Labor Office, and others. Goering, as chairman of the meeting, stated that the task of the Reich Defense Council was that of correlating "all the forces of the nation for accelerated building up of the German armament." The defendant Lammers, in the course of his testimony before the Tribunal on 22 September 1948, professed uncertainty as to whether or not he had attended such meeting. When asked as to whether, as a permanent member of the Reich Defense Council, he would have had a representative there if he himself was not present, he gave the ridiculous explanation, "I don't know because I never considered these meetings to be meetings of the Reich Defense Council." (*Tr. p. 22360.*)

A second meeting of the Reich Defense Council appears to have been held on 25 June 1939, a few weeks before the invasion of Poland. Lammers admits that he himself was present and took a part in this meeting. The minutes of said meeting state (*3787–PS, Pros. Ex. 553*):

> "Minister President, General Field Marshal Goering, emphasizes in a preamble, that according to the Fuehrer's wishes the Reich Defense Council was the determining body in the Reich for all questions for preparations for war."

In the light of this statement by Goering, the efforts of Lammers in testifying before this Tribunal to minimize the significance of the Reich Defense Council or to intimate that it was nonexistent become doubly ludicrous. It is important to note also that Goering indicated in this meeting that the Reich Defense Council was to discuss only the most important questions of Reich defense as they would be worked out by the Reich Defense Committee. As hereinbefore indicated, Lammers had his representative, Kritzinger, on the Reich Defense Committee.

The minutes of this meeting also indicate the comprehensive nature of their war preparations. In evidence is a copy of what was known as the mobilization book for civil administration issued by Keitel of the Armed Forces High Command and consists of general directions as to the measures to be taken in case of mobilization, and emphasizes the cooperation expected from the civilian authorities. It is significant that paragraph 14 thereof provides (*1639a–PS, Pros. Ex. 554*):

> "In order that any new measure should be included in a mobilization schedule for the civil administrative authorities application must be made to the Chief of the Reich Defense Committee * * *."

The defendant in the course of his examination before this Tribunal on 22 September 1948 admitted that the Reich Defense Committee referred to in said paragraph 14 is the same Reich Defense Committee wherein he, Lammers, had a representative, and that such representative was Ministerial Director Kritzinger.

It is important to note that the memorandum relating to the first meeting of the Reich Defense Council on 18 November 1938 also states (*3575–PS, Pros. Ex. 106*):

> "Additional tasks of Reich Defense Council—new formulation of all wartime legislation."

That the Reich Defense Council did play a significant role in the preparation of war laws and war decrees is further established by other evidence in the record.

A Hitler decree was issued on 30 August 1939, only 2 days before the invasion of Poland. This decree bears Hitler's, Goering's, and defendant Lammers' signatures. This decree purported to establish a so-called Ministerial Council for Reich Defense. The defendant in the course of his testimony before this Tribunal on 22 September 1948 admitted that such ordinance was "worked on" by him, and then it was submitted to other agencies, and then submitted to Hitler for his signature. The defendant stated that it had been drawn up in accordance with Hitler's instructions. During such examination before the Tribunal the defendant was asked with respect to this decree (*Tr. p. 22367*):

> "Well, then the date of the decree, 30 August 1939, wasn't merely coincidental was it, that it was issued 2 days before the beginning of the war?"

To this question the defendant answered as follows:

> "No, the tension with Poland which prevailed was extraordinarily great at that time, and there was the threat of war."

On the same day, in the course of his examination, the defendant was asked the further question with respect to this decree (*Tr. pp. 22369–22370*):

> "Well now, you were the administrative expert for Hitler. From what you say now, in view of that fact, was it you who suggested that they form the Ministerial Council for the Reich's Defense, or did Hitler, a man completely naive in matters of administration, dream that up himself?"

To this the defendant answered:

> "I did not make that proposal. It emanated from Goering and from Hitler himself, who called me and said that now some

such organization would have to be created in simplified form for swift and efficient legislation during the war."

The examination continued as follows:

"Q. Well now, Ribbentrop was not a member of the Ministerial Council, was he?

"A. No.

"Q. And yet you informed Ribbentrop, did you not, that you would give him information concerning drafts of decrees which were to be passed by the Ministerial Council, didn't you?

"A. That's correct. The Foreign Minister was deliberately not included in this Ministerial Council for the Defense of the Reich. It was of great importance to him to belong to it, and indeed, I presented that subject to the Fuehrer who declared that that was not necessary. I then consoled Ribbentrop by telling him that I would inform him if matters came up affecting foreign policy."

The foregoing indicates not only with certainty that the Ministerial Council for Reich Defense was created for the specific purpose of waging war against Poland, but also indicates the tremendously important role played by Lammers in the formulation of legislation pertaining to the aggressive plans of Hitler. It is significant in this connection that the defendant, at an earlier point in his examination on 22 September 1948, stated with respect to the Ministerial Council for Defense of the Reich as follows (*Tr. p. 22365*):

"And I was the member in charge, the man who conducted the proceedings."

The examination then proceeded as follows:

"Q. Now there were only six members on that council, isn't that right?

"A. That is right.

"Q. And they were all higher Reich authorities, weren't they?

"A. Yes, they were prominent Reich authorities, particularly since they represented many other departments also, the Plenipotentiary General for Administration, the Plenipotentiary General for Economy; I had no one to represent.

"Q. Now this ministerial council was a legislative body and could issue any legal decrees insofar as they were not explicitly left to the Reichstag or the Cabinet, isn't that right?

"A. Its sole task was that of promulgating ordinances with the force of law."

There would seem to be small need to discuss further the claim of the defendant Lammers to the effect that his role in the formation of legislation in implementation of Hitler's aggressive

war program was a negligible one. His own admissions indicate the contrary. The record discloses a great number of wartime decrees and ordinances promulgated by this organization. It appears that the first meeting of this ministerial council met on 1 September 1939, and it appears that the defendant Lammers was present. At such meeting it appears that 14 separate decrees were ratified. Subsequent meetings held by the ministerial council likewise ratified many wartime decrees, many of them criminal in purpose.

The foregoing references indicate the great importance and influence of the defendant Lammers in the higher Nazi circles in the distinctly policy making sphere. It further indicates his great activity and contribution to the furtherance and implementation of the Nazi aggressions against other countries generally. We will now touch briefly upon his participation in the plans, preparations of, and execution of the specifically named invasions and wars of aggression involved in the charge.

It appears that Lammers became involved in the Austrian question at an early date. We find that on 30 September 1937 he wrote a letter to make arrangements for the presence of defendant Keppler at a meeting to be held between the Landesleiter of the Party for Austria, one Leopold, and Hitler. It appears from the defendant's testimony before this Tribunal given on 22 September 1948 that he knew the circumstances leading up to the invasion of Austria. (*Tr. p. 22372.*)

On 23 April 1938 subsequent to the so-called Anschluss, a Fuehrer decree was issued, cosigned by Lammers, appointing a Reich commissioner for the reunion of Austria with the German Reich. Under date of 14 April 1939 we find a Cabinet law issued for the administration of Austria, signed by Hitler, Frick, Hess, Goering, defendant Schwerin von Krosigk, and defendant Dr. Lammers. Subsequently on 15 March 1940 another Fuehrer decree, cosigned by Lammers, was issued which terminated the office of the Reich Commissioner in Austria, and on 18 June 1941 a decree signed by Lammers introduced Hitler Youth legislation into Austria, which provided for Nazi control and indoctrination of Austrian youth.

While some of the foregoing events indicate knowledge of plans and preparations against Austria, they do not indicate that Lammers played an active role in the formulation or implementation of such plans. Acts of the defendant subsequent to the so-called Anschluss with reference to the administration of the seized territory are not of such character as to justify a finding of guilt against the defendant Lammers under the charges made against him with respect to Austria.

We will now consider the charges and evidence with respect to Czechoslovakia. It appears that after the Munich Pact Lammers took an active part in the plans and preparations for the occupation of Bohemia and Moravia, and it appears that he was present with Hitler, Frank, Frick, the defendant Stuckart, Himmler, Heydrich, and others in the meeting with President Hacha of Czechoslovakia in Berlin on 15 March 1939, at which time according to the judgment of the International Military Tribunal*—

> "The defendant Goering added the threat that he would destroy Prague completely from the air. Faced by this dreadful alternative, Hacha and his foreign minister put their signatures to the necessary agreement at 4:30 [o'clock] in the morning, and Hitler and Ribbentrop signed it on behalf of Germany."

Immediately thereafter the defendant Lammers, with other prominent Nazis, proceeded to Prague to assist in carrying out the aggression against Czechoslovakia. Lammers, in his examination before this Tribunal, professed ignorance as to their objectives when the train in which he was traveling on 15 March 1939 proceeded toward Czechoslovakia. It is significant that immediately after arriving in Prague it was the defendant Lammers, acting with the defendant Stuckart, who drafted the decree establishing the Protectorate of Bohemia and Moravia. This decree is dated 16 March 1939. Such decree was signed by Hitler, Frick, von Ribbentrop, and Lammers. The terms of this decree indicate the utter callousness of the Nazi hierarchy in the carrying out of their aggressive plans against weaker nations. Professions were made therein to the effect that Bohemia and Moravia were being protected and that such Protectorate was autonomous and should govern itself. Subsequently, however, a decree was issued on 23 June 1939, signed by Hitler, Frick, and the defendant Lammers, which, among other things, provided (*NG–3204, Pros. Ex. 482*):

> "1. The Reich Protector is authorized to decree amendments of the autonomous law inasmuch as necessitated by common interests.
>
> "2. In cases where delay proves dangerous, *the Reich Protector may decree any kind of legal regulations.*" [Emphasis supplied.]

Subsequently on 7 May 1942 another decree was issued, signed by Hitler and the defendant Lammers, which empowered the Reich Protector "to take appropriate measures as determined by that edict," meaning the decree establishing the Protectorate of 16 March 1939 in agreement with the Reich Minister of the

* Trial of the Major War Criminals, op. cit., volume I, page 197.

Interior in order to adapt the administration to the conditions prevailing in each case and to issue provisions necessary thereto. The foregoing references certainly indicate knowledge of and participation in the plans for the invasion of Czechoslovakia, that is, Bohemia and Moravia, and participation in the formulation and carrying out of policies in Bohemia and Moravia after the invasion thereof.

Turning now to the question of Lammers' participation in the aggression against Poland, it appears that as early as 15 June 1939 Lammers received from Schickedanz who was a lieutenant of Rosenberg's of the Foreign Affairs Office, a communication dealing with the Jewish question in Poland. Said communication commenced with the statement (*1365–PS, Pros. Ex. 487*): "I am enclosing the plan for the East."

It is noteworthy that subsequently Schickedanz became Lammers' deputy with the Governor General for the occupied Polish territories. In testifying before this Tribunal on 22 September 1948 Lammers sought to minimize the significance of having Schickedanz as his representative with the Governor General for the occupied Polish territories by asserting (*Tr. p. 22381*):

> "He wasn't my representative either. I sent him there simply to give him a job and gave him the task of observing because questions in the Government General interested me."

Such explanation appears to be sham and frivolous, and in this same category can be placed the greater part of his explanations and excuses as disclosed by the testimony with respect to Poland, the plans, preparations, and other activities in connection therewith which show defendant involved. We now call attention to the following significant exhibits in evidence: a decree signed by Hitler, Frick, Hess, Goering, von Ribbentrop, and defendant Lammers, dated 1 September 1939 which provides for the reincorporation with the Reich of the Free State of Danzig; a decree dated 8 October 1939, signed by Hitler, Goering, Frick, Hess, and defendant Lammers, and relating to the annexation of the eastern territories and incorporating the Polish territory into the Reich, and containing various provisions with respect to the administration thereof; a decree dated 12 October 1939, signed by Hitler and cosigned by a number of other high Nazi officials, including defendant Lammers, which decree appointed Dr. Frank as Governor General of the occupied Polish territories; a decree signed by Hitler, Frick, and Lammers, dated 20 October 1939 relating to the administration and organization of the eastern territories; a decree, dated 2 November 1939, signed by Hitler, Frick, and Lammers, relating to the administrative structure of the eastern

territories by providing that the Reich Gau, West Prussia, should henceforth be called the Reich Gau Danzig, West Prussia; a decree dated 29 January 1940, signed by Hitler, Frick, and defendant Lammers, amending a decree of 8 October on the organization and administration of the eastern territories; and a decree dated 7 May 1942, signed by Hitler and defendant Lammers, relating to the establishment of the State Secretariat for Security Affairs in the Government General, and which contained, among other things, the provision (*2539–PS, Pros. Ex. 496*)—

> "The Reich Leader SS and Chief of the German Police is authorized to give the State Secretary for security affairs direct orders in the fields of security and the strengthening of the German nationality."

And a further paragraph therein contains this significant provision:

> "In cases of disagreement between the Governor General and the Reich Leader SS and Chief of the German Police, my decision is to be obtained through the Reich Minister and Chief of the Reich Chancellery."

From the foregoing it is obvious that the knowledge and participation of the defendant Lammers with respect to the aggression against Poland was far from being merely perfunctory. That the defendant Lammers continued to play an important role in the formulation of legislative matters pertaining to Poland appears from the following prosecution exhibits: an exhibit containing a telegram from Governor General Frank to Lammers, which shows Lammers was being consulted with respect to important matters of policy pertaining to Poland and that he was making vital suggestions in the formulation of policy in respect thereto. Another prosecution exhibit is a decree of 7 May 1942, signed by Hitler and the defendant Lammers, pertaining to the administration of the Government General. This decree also indicates that in the event of differences between the Governor General and the Reich Leader SS and Chief of German Police a decision was to be obtained from Hitler through the Reich Minister and Chief of the Reich Chancellery who was defendant Lammers. Another significant prosecution exhibit is a decree dated 27 May 1942, signed by Hitler and defendant Lammers, relating to the appointment, transfer, and dismissal of civil servants within the area of the jurisdiction of the Government General.

The criminal participation by defendant Lammers in the criminal aggression of the Reich against Poland we consider established beyond a reasonable doubt.

We now come to a consideration of the evidence adduced in connection with the charges against defendant Lammers relative to the part he is alleged to have played in connection with the invasions of Denmark and Norway. The evidence reveals that Lammers, at an early date, had knowledge of and became involved in the plans and preparations for the invasion of Norway. It appears that as early as December 1939 Schickedanz wrote to Lammers, which communication contained notes on a lecture. Such notes made reference to a suggestion by Admiral Raeder on the importance of Norway in the war, and also related to a conference of 16 December 1939 which had been attended by Quisling, the Norwegian traitor. Said communication clearly indicates that there were plans afoot for taking action against Norway. Before leaving such communication we wish to call attention to the following paragraph contained therein (*1369–PS, Pros. Ex. 503*):

> "From the beginning planning of a political central agency which properly evaluates in advance the coming difficulties and the exceptional situation. Political head as near as possible to the decisive place to avoid any delays caused by the participation of several departments and possible to reach fast decisions. Therefore, best Reich Chancellery direct but completely camouflaged by respective measures. Exclusion of the Foreign Office from the case, only Reich Foreign Minister to be kept informed in order not to burden this office."

Under date of 24 April 1940, and immediately following the invasion of Norway, a decree was issued, signed by Hitler, Goering, Keitel, Frick, and the defendant Lammers, which decree appointed Terboven Reich Commissioner of Norway and contained many provisions with respect to the government of invaded Norway. Article 8 of such decree is significant and reads as follows (*NG–3223, Pros. Ex. 504*):

> "Regulations for the implementation and supplementation for this decree will be issued in the civilian sector by the Reich Minister and Chief of the Reich Chancellery and in the military sector by the Chief of the Wehrmacht High Command on the basis of my directives."

Again we must remind ourselves that the Reich Minister and the Chief of the Reich Chancellery there referred to is none other than the defendant Lammers. On 31 May 1940 Lammers directed a letter to care of Reichshauptamtsleiter Schickedanz, stating among other things as follows (*NG–1442, Pros. Ex. 498*):

"As reward for your activity as my Plenipotentiary with the Governor General of the occupied Polish territories and with the Reich Commissioner for the occupied Norwegian territories I allotted to you for the period from 1 January to the end of May of this year a lump sum which, in view of the cuts in salaries, amounts to altogether 7,100 RM."

It appears further that in June 1940 Lammers again wrote Schickedanz stating (*NG–1443, Pros. Ex. 505*) :

"As Reich Commissioner Terboven informs me he has now established the liaison office planned by him in Berlin. You will learn all details from the copy of my enclosed circular. May I express to you my gratitude for your activities as leader of the temporary liaison office at the Reich Chancellery."

Further documentary evidence reveals Lammers' close connection and participation in the plans of the invasion of Norway both before and after same was commenced and in the occupation that followed. Among the exhibits that are of special significance is Terboven's report to Hitler as of 22 July 1940 which was submitted through Lammers. This report, among other things, shows the part that Quisling played in cooperation with the Germans leading up to the invasion of Norway. In evidence is a memorandum on a conference that took place between Hitler, Quisling, Martin Bormann, Reichsamtsleiter Scheidt, and the defendant Lammers on 16 August 1940. This exhibit establishes Lammers' knowledge and participation as to the aggression against Norway. Introduced in evidence is a letter from Terboven to defendant Lammers, dated 17 October 1940. This letter encloses a report on the activities of the Commissioner for the Norwegian occupied territories from April to the date of the communication. A decree dated 12 December 1941, signed by Lammers as Reich Minister and Chief of the Reich Chancellery, is in evidence, which decree established a central bureau for the occupied Norwegian territories and appointed defendant Stuckart as chief of such bureau. Also in evidence is a file note from defendant von Weizsaecker to defendant Woermann which enclosed a letter from Lammers to Quisling, dated 17 September 1942, which letter, among other things, states that Hitler had concluded to postpone final disposition of German-Norwegian relations until after the war and that in the meantime Norway's interests abroad were to be represented only by (*NG–2177, Pros. Ex. 512*)—

"* * * the competent authorities of the Reich, that is in relation to the Reich government through the Reich Commissioner; in the occupied territories through the chiefs of the German administration in these territories, and in countries on a

friendly footing with us through the diplomatic Reich representatives maintained there or through the Foreign Office."

He further states:

"When Norwegian interests in the occupied territories and abroad are concerned, the Reich Commissioner wishes that the competent German authorities employ Norwegians, who are members of the NS or closely connected with it, as consultants. If matters have not hitherto been handled in this way, I shall arrange for the necessary steps to be taken in this direction."

The foregoing evidence, as heretofore indicated, establishes beyond a reasonable doubt the criminal participation of Lammers in the preparations leading up to Norway's invasion, and in the subsequent administration of the occupied country.

There is very little evidence showing Lammers' participation in the invasion and subsequent administration of Denmark. There is one exhibit, which is a Reich Chancellery memorandum dealing with the position of the German Plenipotentiary in Denmark. Here defendant Lammers states that the new German Plenipotentiary in Denmark, while no longer a diplomatic representative, nevertheless belonged to the Foreign Office. He recommends that the Reich labor leader address a request he has in mind to the Reich Minister and Chief of the Reich Chancellery. This document by itself would not justify a finding against Lammers with respect to the invasion and occupation of Denmark.

We come now to a discussion of the charges against Lammers with respect to Belgium, Holland, and Luxembourg. The record contains evidence to show that in January 1940 a Fuehrer decree was issued relating to "the preparation for the occupation of territories outside of Germany." It is significant that a handwritten footnote on this letter states that (*Tr. p. 22386*)—

"The Fuehrer has approved the decree, but ordered that it is to be issued by the Chief of the Reich Chancellery. We are to receive copies for distribution as suggested above."

It is also significant that a memorandum in said exhibit, from the Supreme Command of the Armed Forces, reads in part as follows (*NG–4307, Pros. Ex. 540*):

"Memorandum concerning Fuehrer decree on maintenance of secrecy

"According to an announcement by Ministerialdirektor Kritzinger, the Fuehrer decree of 29 January 1940 has been forwarded in writing only to Field Marshal Goering, the Fuehrer's deputy, and the Reich Minister of the Interior. To the remain-

ing ministers the decree was announced orally by Reich Minister Lammers."

It should be noted that the foregoing exhibit contains evidence which clearly indicates that the countries which it was planned to occupy were the countries of Belgium, Holland, and Luxembourg.

It appears that on 31 January 1940 defendant Lammers forwarded to Keitel a photostat of the decree as approved by Hitler on 29 January. While the defendant in cross-examination before this Tribunal stated that the final decree was in absolute conformity with the draft, he admitted that he was not allowed to change the subject matter of the decree that had been approved by Hitler and that (*Tr. p. 22389*)—

"Such a decree imposing the obligation to observe secrecy may have been enacted."

It should be noted that the foregoing decree was issued more than 3 months prior to the invasion of the countries of Belgium, Holland, and Luxembourg. In the light of his obvious knowledge, and in view of the participation of Lammers in the handling of the foregoing decree, no time need be spent in consideration of Lammers' representations to the effect that contemplated military operations were not imparted to the civilian officials.

A decree was issued on 18 May 1940, following the invasion of Holland, Belgium, and Luxembourg, which invasion took place on 10 May 1940, which decree was signed by Hitler, Goering, Keitel, Frick, and the defendant Lammers. This decree provided for the execution of power by the government in the Lowlands. Paragraph 1 states in part (*1376–PS, Pros. Ex. 514*):

"The occupied Dutch territories will be subordinated to the Reich Commissioner for the occupied Dutch territories."

Paragraph 7 of such decree contains the following:

"Regulations for the execution and completion of this decree will be issued according to my directives for the civilian sphere by the Reich Minister and Chief of the Reich Chancellery and for the military sphere by the Chief of the Supreme Command of the Armed Forces."

Under date of 21 May 1940 Lammers transmitted to the Reich Minister a letter enclosing a decree of the Fuehrer signed by Hitler and Lammers (*EC–178, Pros. Ex. 516*) which announced the appointment of Dr. Seyss-Inquart as Reich Commissioner for the occupied Netherland territories and provided for the government of said territory. It specifically empowered Field Marshal Goering to issue directives within the limits of the duties

incumbent upon him as Plenipotentiary for the Four Year Plan. It also provided that "this decree is not to be published."

The evidence above referred to, and evidence in the record, not specifically mentioned herein, indicates clearly that Lammers was a criminal participant in the plans and preparations for the invasion of and aggression against Belgium, Holland, and Luxembourg, and in the Reich's administration of said countries after their invasion.

We come now to the question of Lammers' participation in the plans and preparations for aggression against Russia. In testimony before this Tribunal the defendant was inclined to disclaim any real knowledge of the plans against Russia. He admitted, "To be sure every once in a while I had certain inner misgivings * * *." (*Tr. p. 21064.*) and he indicated that he had discussed the matter with the Fuehrer, who had told him that he feared Russia was going to attack Germany. He claimed that he believed such statements. He admitted also that there had been talk of a German preventive war "but there was no single word said to me that such a preventive war was being planned and prepared for." (*Tr. p. 21056.*)

The defendant, in an examination before this Tribunal on 13 September 1948, stated (*Tr. p. 21058*):

> "I took part only in Rosenberg's preparation for the organizational side of the civilian administration to be set up in the event of the outbreak of war."

On 20 April 1941 a decree, signed by Hitler and Lammers, appointed Rosenberg as Hitler's deputy "for the central control of questions connected with the eastern European region." It is significant that this document contains a note stating (*NG–3709, Pros. Ex. 541*):

> "The Fuehrer signed the above document at Fuehrer headquarters on his birthday, that is, 20 April 1941, after telephone communication with Dr. Lammers."

A part of this prosecution exhibit is a letter of Lammers' dated 21 April 1941 to Funk, Reich Minister for Economy, enclosing the decree mentioned. In this letter the defendant states that (*NG–3709, Pros. Ex. 541*)—

> "* * * Rosenberg has been asked to make all necessary preparations as soon as possible in case of a possible state of emergency. The Fuehrer has authorized Rosenberg to call on the supreme Reich authorities for their closest cooperation for this purpose, to obtain information from them, and also to summon the deputies of the supreme Reich authorities to meet-

ings. In order to guarantee secrecy of the commission and of the necessary preparations in this state, only these supreme Reich authorities are to be informed. On this cooperation Reichsleiter Rosenberg has chiefly to rely. That is in accordance with the Fuehrer's wish, I should like to ask you to place yourself at the disposal of Reichsleiter Rosenberg for the execution of his task.

"In the interest of secrecy it would be advisable if you would appoint a deputy at your office who alone would communicate with the Reichsleiter's office and who alone, apart from your permanent deputy, should be informed of this letter."

Such letter was signed by defendant Lammers.

It appears that on 21 April 1941 the defendant Lammers sent a letter of similar tenor to Field Marshal Keitel. Such letter states, among other things, that the particular individuals upon whom Reichsleiter Rosenberg will primarily depend are "the Commissioner for the Four Year Plan, the Reich Minister of Economics, and you, yourself." (*865–PS, Pros. Ex. 366.*)

From Rosenberg's files we have in evidence a memorandum that recites, among other things, that Lammers and Rosenberg had agreed to suggest to the Fuehrer that he name a Reich Minister and General Protector for the occupied eastern territories. It then states: "Herewith a proposal which has been drafted by Dr. Lammers and discussed with the undersigned." (*1025–PS, Pros. Ex. 524.*)

Other exhibits introduced in evidence further indicate defendant Lammers' active participation in the plan of aggression against Russia and in the carrying out thereof. Particular attention is called to a letter from von Ribbentrop to Lammers under date of 13 June 1941. It is significant that such letter states in part (*NG–1691, Pros. Ex. 542*):

"It is evident that the impending events will bring about political movement all over the East. The territory occupied by German troops will border on most sides on foreign states which will very much affect their interest."

This was only several days before the invasion of the Soviet territory. Three weeks after the invasion of Russia it appears that Lammers attended a conference at Hitler's field headquarters, together with Rosenberg, Goering, Keitel, and Bormann. This conference concerned the contemplated incorporation of all Baltic regions.

From the evidence adduced in support of the charges against the defendant Lammers under this count, with respect to the

alleged acts of aggression against Czechoslovakia, Poland, Norway, Holland, Belgium, Luxembourg, and Russia, it is established beyond a reasonable doubt that the defendant Lammers was a criminal participant in the formulation, implementation and execution of the Reich's plans and preparations of aggression against those countries. We find the defendant Lammers guilty under count one.

STUCKART

Until Himmler was appointed Minister of the Interior in 1943, the defendant Stuckart was not a Secretary of State in that ministry, but was the responsible chief of one of its principal sections. During that period, however, he bore the honorary title of State Secretary, carried over from that position which he held in another ministry.

He was not present at any of the Hitler conferences in which plans for aggressive wars were proposed and discussed. After these aggressions took place he occupied many responsible positions in the administration of the occupied territories, and drafted or assisted in the preparation of decrees related to them, and of the treatment of their inhabitants, as well as anti-Semitic legislation which was adopted in the Reich, and extended to the occupied territories. He participated in the preparation of the Reich Defense Law of 4 September 1938, and as Frick's staff leader, acted as chairman of the meeting and explained the provisions of that law, and was himself a member of the Reich Defense Committee. In May 1939 he was present at a conference in which the economic use and exploitation of the territories which might be occupied as a result of war was discussed; he received and presumably was familiar with the general mobilization plans.

We have reviewed the evidence and the claim of the prosecution based thereon, but have been unable to find and our attention has not been directed to any evidence that he had knowledge of these aggressions or that he planned, prepared, initiated, or waged these wars. Whether what he did constituted war crimes or crimes against humanity will be discussed when we discuss those counts of the indictment, but we deem that his guilt under count one of the indictment is not proved beyond a reasonable doubt and we therefore acquit him under that count.

DARRÉ

While the defendant Darré was the Reich Minister for Food and Agriculture and head of the Reich Food Estate from the seizure of power until his removal from office, and was therefore

a member of the Reich Cabinet, he never attended any of the conferences at which Hitler disclosed his plans of aggression, and there is no evidence that he was informed of them, with the following exception, namely: A letter which he wrote to Goering early in October 1939 when he was engaged in a dispute with Himmler over the jurisdiction between his office and the Office for the Strengthening of Germandom, in which he stated that the plans for the resettlement of ethnic Germans in the east had been developed over a long period by himself and his organization. But from this fact it is necessary not only to infer that he knew that war was likely, but a second inference that he knew that it would be an aggressive war. The danger of setting inference upon inference, and from the second inference drawing a conclusion of guilt involves a degree of speculation in which the element or likelihood of mistake is too great.

We hold that proof is insufficient, and we therefore acquit Darré under count one.

DIETRICH

The defendant Dietrich was Reich press chief and press chief of the Nazi Party during the entire period when the German aggressive wars were planned and initiated, and while he was in constant attendance at Hitler's headquarters as a member of his entourage, the only proof that he had knowledge of these plans is that he had control over the German and Party press which played the tune before and upon the initiation of each aggressive war, which aroused German sentiments in favor of them, and thus influenced German public opinion.

Although he attended none of the Hitler conferences to which we have adverted, we deem it entirely likely that he had at least a strong inkling of what was about to take place. But suspicion, no matter how well founded, does not take the place of proof. We therefore hold that proof of guilt has not been shown beyond a reasonable doubt, and the defendant Dietrich is acquitted under count one.

BERGER

There is no evidence whatever that the defendant Berger had knowledge of Hitler's aggressions. While, without question, he vigorously engaged in waging wars, there is nothing to indicate that he knew that they were aggressive or in violation of international law.

He should be and is acquitted under count one.

SCHELLENBERG

At the beginning of the wars described in the indictment, the defendant Schellenberg was a comparatively minor official in the SD. He took an active part in the Venlo incident in which two British agents, Stevens and Best, were kidnapped on Dutch soil and brought to Germany, and the Dutch army officer Klopf was killed. The prosecution asserts that this incident was used by Hitler as an excuse for the invasion of the Low Countries, and therefore Schellenberg is criminally liable.

We have no doubt that he was responsible for the incident in question, and we cannot accept his defense that he did not know of and had no control over these kidnappings and the assassination of Klopf. The fact that after it had occurred he was sent to the Foreign Office to make a report, and that it was the intention of his superiors to use his report as proof that the Netherlands had violated its neutrality is not sufficient, as the record does not disclose that he had any knowledge as to the purpose for which the report was to be used.

While his part in the Venlo incident may subject him to trial and punishment under Dutch law, that is a matter over which this Tribunal has no jurisdiction. There is no evidence tending to prove that he took any part in planning, preparing, or initiating any of the wars described in count one, or that he had knowledge that they were aggressive, or that with such knowledge he engaged in waging war.

We therefore acquit the defendant Schellenberg under count one.

SCHWERIN VON KROSIGK

The defendant Schwerin von Krosigk, during the entire Hitler regime, was Reich Minister of Finance and a member of the Reich Cabinet. He was not present at any of the Hitler conferences at which the latter announced his plans, nor was he one of Hitler's confidants. That many of his activities and those of his department dealt with waging war cannot be questioned, but in the absence of proof that he knew these wars were aggressive and therefore without justification, no basis for a judgment of guilty exists.

We therefore acquit him under count one.

KOERNER

In addition to the general charges made against all the defendants named in this count, it is specifically charged that the defendant Koerner, as permanent deputy of Hermann Goering, played a

leading role in the planning, coordination, and execution of an economic program to prepare the German Reich for the waging of aggressive war, and that he was further responsible for coordinating the economic exploitation of the occupied territories in furtherance of the waging of aggressive war. It is further specifically charged that he, together with Goering, the defendant Keppler and other persons, participated in the establishment of the Four Year Plan in 1936, and that thereafter he, as Goering's deputy, directed the office of the Four Year Plan which was charged with control over the essential economic activities of the German agencies preparing for war, exercised supreme authority in economic matters, was responsible for the development and stockpiling of critical war material which was designed to prepare the armed forces and the German economy for aggressive war within 4 years. It is further specifically asserted that between 1939 and 1942, Koerner served as chairman of the General Council of the Four Year Plan which was concerned with the problems of labor allocation and production in war economy. It is specifically alleged that Koerner, together with defendant Pleiger, participated with Goering and others in the creation of the Hermann Goering works in 1937, and that Koerner, as chairman of the Aufsichtsrat of said organization and holder of other high offices therein was influential in determining the policies of this huge organization which was founded in furtherance of the planning, preparation, and waging of wars of aggression. It is further specifically alleged that as early as November 1940 the defendant Koerner was informed by Goering of the coming attack against the Soviet Union, and that thereafter Koerner attended and advised the conferences which were convened to consider the scope and method of German exploitation of the eastern economies.

It is proper that at the outset of our treatment of the charges against Koerner short reference is made to the high positions held by him in the government of the Third Reich extending over a period of 12 years, a period encompassing the rise of the Nazi power to its collapse in 1945. It appears that the defendant became acquainted with Hermann Goering in 1926. It appears that in 1930 Koerner gave up his private business, as he stated in his examination before this Tribunal, to "devote myself wholly to Goering." It appears that in 1931 he joined the SS. He became quite closely associated with Himmler, and subsequently collaborated with Himmler in placing high SS officials in governmental positions. It should be noted here that it was during this period that Goering was in charge of the Gestapo and Himmler was Goering's deputy. It appears that after the Nazis established

themselves in power in 1933 Koerner became Goering's adjutant and co-worker, and to quote from his own testimony before this Tribunal (*Tr. p. 14096*):

"Of course Goering discussed many things with me that he did not discuss with others because he had confidence in me."

In 1936 Koerner became State Secretary for the Four Year Plan. He then became deputy chairman of the General Council in charge of the Four Year Plan. In 1937 he became chairman of the supervisory board of the Hermann Goering works. In 1940 he was Goering's deputy in the Economic Leadership Staff East, which was an organization created for the exploitation of Russia. In 1942 he became a member of the Central Planning Board.

The question whether defendant Koerner is guilty under this count revolves greatly around his position and activities as deputy to Goering as Plenipotentiary in charge of the Four Year Plan, as deputy chairman of the General Council, and as member of the Central Planning Board. The Four Year Plan was established in 1936, the establishment being announced at the Reich Party rally in Nuernberg on 9 September of that year. At such time Goering was appointed as Plenipotentiary in charge and was vested with extensive and sweeping authority to compel cooperation of all governmental and Party agencies. A ministers' council, referred to as the General Council, was created for the making of principal decisions in connection with the Four Year Plan and its work. Such council included, among others, the State Secretary and Chief of the Reich Chancellery, defendant Lammers, and defendant Keppler. Koernor was deputy chairman of such General Council for the Four Year Plan from 1939 to 1942. While only carrying the title of deputy chairman he was the virtual chairman thereof, as he regularly presided.

The Central Planning Board, of which he was a member, after 1942 was an official agency of the Four Year Plan. It was in fact the means through which the German war effort was directed from 1942 to 1945. Such Central Planning Board was composed of three members, Albert Speer, Erhard Milch, and defendant Koerner. The function of the Central Planning Board was planning for the distribution and allocation of raw materials necessary for war, and the allocation of manpower for the war economy. It seems that in 1943 Walter Funk was appointed as the fourth member of the Central Planning Board.

That the real aim and purpose of the Four Year Plan was to prepare Germany for war becomes clear from the evidence. It is noteworthy that, on 14 October 1939, Reich Minister for Eco-

nomics Funk, in discussing the tasks of the German war economy stated (*3324–PS, Pros. Ex. 944*):

"It is known that the German war potential has been strengthened very considerably by the conquest of Poland. We owe it mainly to the Four Year Plan, that we could enter the war economically so strong and well prepared.

* * * * * * *

"One can evaluate correctly what the Four Year Plan means for the economic preparation of war, only when one considers that the Four Year Plan does not include only the food and raw material economy, only the entire industrial economic life, but that it also includes foreign commerce, money, and foreign-exchange economy and finance, so that the entire economic life and production in Germany is authoritatively determined and executed by this plan. Although all the economic and financial departments were harnessed in the tasks and work of the Four Year Plan under the leadership of Field Marshal Goering, the war economic preparation of Germany has also been advanced in secret in another sector for many years, namely, by means of the formation of a national guiding apparatus for the special war economic tasks, which had to be mastered at that moment when the condition of war became a fact."

Further emphasizing the highly important role played by the Four Year Plan, there is in evidence a report of the Military Economic Staff of the OKW in May 1943; confidential report on "The History of the German War and Armament Economy" by General Thomas, head of the Military Economic Staff of the OKW; an address by State Secretary Neumann, "A Reorganization of the Four Year Plan," which speech was made on 24 April 1941; and an article by State Secretary Neumann and one Dr. Donner, "The Four Year Plan and its Organizational Questions."

That the Four Year Plan was an instrumentality for the planning and carrying on of aggressions is no longer a matter of dispute. The defendant Koerner, however, has sought to plead ignorance of the fact that the Four Year Plan was in fact instrumental in the planning, preparation, and waging of aggressive war. He has further sought to minimize his authority as Goering's deputy in directing the plans and programs of the Four Year Plan. Neither of such defenses can be successfully maintained in the face of the strong and positive evidence to the contrary. The truth of the matter is that in August 1936 Hitler privately gave Hermann Goering a memorandum concerning the tasks of the prospective Four Year Plan. It appears from the testimony that of the only three copies of this memorandum pre-

pared Goering received one copy and another copy was presented to Albert Speer while the third copy apparently is unaccounted for. It is significant that this memorandum, a copy of which was introduced in this case, sets forth the tasks given Goering in the Four Year Plan.

Noteworthy are the following (*NI–4955, Pros. Ex. 939*):

"1. The German armed forces must be ready for combat within four years.

"2. The German economy must be mobilized for war within 4 years."

The memorandum also stated:

"The extent and pace of the military exploitation of our strength cannot be too large or too rapid.

* * * * * * *

"The definitive solution lies in the extension of our living space. That is an extension of the raw materials and food bases of our nation. It is the task of the political leadership to solve this question at some future time."

And further—

"Much more important however is to prepare for the war during the peace."

It appears that in a meeting of the Ministerial Council held on 4 September 1936, under the chairmanship of Goering, which meeting was attended by Koerner, Goering read the Hitler memorandum above referred to.

In testifying before this Tribunal on 4 August 1948 the defendant admitted that Goering had given him the memorandum to read and that he, the defendant, had read all of it. The memorandum referred to would indicate that Koerner had knowledge of the aggressive aims and purposes of the Four Year Plan at such an early date as 1936, and it is significant also that on 26 May 1936 Koerner with other defendants, and General Keitel, chief of the Wehrmacht, attended a top secret meeting of Goering's supervisory committee on raw materials. At such meeting there was considerable discussion relative to the great need for oil, rubber, and iron ore. The minutes disclose, among other things, the following (*NI–5380, Pros. Ex. 945*):

"With a thorough mobilization of the army and navy, the whole problem of conducting the war depends on this. All preparations must be made for the A-case so that the supplying of the wartime army is safeguarded."

He testified before this Tribunal on 29 July 1948 and admitted that he knew that the Four Year Plan had military economic

aims. The defendant Koerner, in his testimony on 30 July 1948, in discussing the last mentioned meeting presided over by Goering, stated with respect to "A-case" there mentioned, which apparently was a code term to indicate—in case of war (*Tr. p. 14127*):

"We thought a lot of the A-case, but it never occurred to us that Germany would attack; we were anticipating an attack on Germany."

In evidence is an exhibit consisting of the report of a speech of Hermann Goering on the execution of the Four Year Plan, dated 17 December 1936, where it is stated (*NI–051, Pros. Ex. 964*):

"In closing, Goering demanded unrestricted utilization of all power in the whole economic field. All selfish interests must be put aside. Our whole nation is at stake. We live in a time when the final dispute is in sight. We are already on the threshhold of mobilization and are at war. Only the guns are not yet being fired."

In testifying before the Tribunal on 30 July 1948, upon being asked whether the foregoing statement and various other statements made by Goering calling for rapid and extensive mobilization of the economy of Germany for military purposes did not indicate to him that the Four Year Plan was designed to prepare Germany for war, and even to prepare Germany for an aggressive war, the defendant stated (*Tr. pp. 14130–14131*):

"I do not deny that such statements or similar statements were made by Goering here and elsewhere. Of course, the document is not an official document but is a record drawn up subsequently by an economic group; therefore, it is not certain that Goering actually used the language given in the record. It is possible that he did. You can understand Goering's language only if you know the conditions that prevailed at the time. At that time, according to my opinion, it was definitely not we who were proposing to bring about any conflict with Russia or were designing to bring about any such conflict."

On 22 October 1936 Goering appointed the defendant Koerner as his deputy. The order provided (*NG–1221, Pros. Ex. 460*):

"In all current business concerning the Four Year Plan, I shall be represented by State Secretary Koerner."

In this decree Goering also set up the council of ministers to collaborate with him, which has been hereinbefore referred to as the General Council. In his testimony before this Tribunal the defendant Koerner admitted that Goering, through the aforesaid

grants of power to him by Hitler, had become well nigh all-powerful in the economic sphere, the defendant stating (*Tr. p. 14160*):

"All rights which Hitler possessed himself could now, in the economic sphere, also be exercised by Goering."

Thus, we now have Koerner as deputy to the most powerful man in the Reich in the economic field, the man who under the Four Year Plan had the task "to make Germany ready for war in 4 years." Koerner, as Goering's deputy, represented him from time to time at important meetings where policies were being formulated. That a man in such position could be without knowledge as to the aggressive nature of the plans under consideration is impossible of belief.

The repeated assertions of Koerner to the effect that Goering was trying to avoid war and he was in fact a man of peace, is such a transparent effort to conceal his own knowledge and motives that we need not dwell thereon at length. It should not be forgotten, however, that this is the same Goering who was tried before the International Military Tribunal which stated in the course of its judgment:*

"From the moment he joined the Party in 1922 and took command of the street-fighting organization, the SA, Goering was the adviser, the active agent of Hitler, and one of the prime leaders of the Nazi movement. As Hitler's political deputy he was largely instrumental in bringing the National Socialists to power in 1933, and was charged with consolidating this power and expanding German armed might. He developed the Gestapo, and created the first concentration camps, relinquishing them to Himmler in 1934, conducted the Roehm purge in that year, and engineered the sordid proceedings which resulted in the removal of von Blomberg and von Fritsch from the army. In 1936 he became Plenipotentiary for the Four Year Plan, and in theory and in practice was the economic dictator of the Reich. Shortly after the Pact of Munich, he announced that he would embark on a five-fold expansion of the Luftwaffe, and speed rearmament with emphasis on offensive weapons. * * *

"The night before the invasion of Czechoslovakia and the absorption of Bohemia and Moravia, at a conference with Hitler and President Hacha, he threatened to bomb Prague if Hacha did not submit. This threat he admitted in his testimony.

* * * * * * *

* Trial of the Major War Criminals, op. cit., volume I, pages 279–282,

"After his own admissions to this Tribunal, from the positions which he held, the conferences he attended, and the public words he uttered, there can remain no doubt that Goering was the moving force for aggressive war, second only to Hitler. He was the planner and prime mover in the military and diplomatic preparation for war which Germany pursued.

* * * * * * *

"His guilt is unique in its enormity. The record discloses no excuses for this man."

The further defense of Koerner to the effect that he had no real authority or discretionary power in the high positions he held is not supported by the evidence. On the contrary, the evidence amply establishes the wide scope of his authority and discretion in the positions he held, and which enabled him to shape policy and influence plans and preparations of aggression. We need not here discuss in detail the many and various items of evidence that convincingly establish his authority. We will here only allude to statements made by him during his examination before the Tribunal. These bear directly upon the scope of his authority and discretion.

In testifying before this Tribunal on 30 July 1948 he stated (*Tr. p. 14160*):

"I was Goering's deputy in all current affairs concerning the Four Year Plan."

Then he stated further by way of explanation (*Tr. pp. 14160–14161*):

"Current affairs includes everything connected with decisions already taken by Goering, in contrast to the decisions themselves. I myself had to see to it that questions on which decisions were to be made were submitted; that orders on issues which had been decided were prepared and published, and I also had to prepare Goering's decisions insofar as on the council of the Four Year Plan I was chairman, as deputy of Goering."

In response to a question, "Had Goering issued any orders were you able to deputize for him?" he answered:

"Yes, if a matter was already under way and Goering had already decided it, and subsequently individual orders became necessary, then I could. That was current business."

Koerner's counsel later asked Koerner the following question (*Tr. p. 14166*):

"If I understand you correctly, you, yourself, are of the opinion that the individual instructions which had to be given after

Goering had made a fundamental decision could be issued by you, yourself?"

The defendant answered, "Yes, naturally."

Subsequently, on cross-examination before this Tribunal on 4 August 1948, when asked if it would be a fair summary of his position to say that he was "chief of the office of the Four Year Plan and in charge of the management and supervision of that office?" he answered (*Tr. p. 14703*):

"Yes, with the management and supervision of the agency. That was entrusted to my care, yes."

In his testimony before the Tribunal Koerner described his tasks on the General Council as follows (*Tr. p. 14169*):

"Yes, it was my task to coordinate the various agencies insofar as this was possible without the special orders being issued. This adjusting position, as I think you might call it, I exercised in particular on the General Council of the Four Year Plan."

Other testimony in the record indicates that it was the function of the General Council to investigate all measures for making the Four Year Plan work.

In the light of the foregoing and other evidence in the record not here specifically alluded to which establishes the wide scope of his authority and activities as Goering's deputy in the Four Year Plan; and his close association both socially and officially with Goering; and his long service as deputy chairman of the General Council at the meetings of which he, and not Goering, usually presided; his asserted ignorance of the role of the Four Year Plan in the plans, preparations, and execution of various Nazi aggressions here involved becomes incredible.

The foregoing observations have not dealt specifically with evidence bearing on the aggressions against any specifically named country. We will now touch briefly on some portions of the evidence dealing therewith. According to Koerner's own testimony before the Tribunal, he saw a change in Hitler's attitude after 1935 for he states (*Tr. p. 14635*):

"In 1938 I had certain misgivings concerning the repercussions concerning such vehement actions and drive."

Shortly before the invasion of Austria Hitler reorganized the Four Year Plan and in so doing placed the Ministry of Economic Affairs* under Goering. Goering by a decree dated 5 February 1938 made certain specific provisions relating to such reorganization, among them the following (*NID–13629, Pros. Ex. 952*):

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* Generally referred to as the Reich Ministry of Economics.

"My permanent deputy in all matters concerning the Four Year Plan is State Secretary Koerner, as up to this time."

* * * * * * *

"In order to secure in the future also the necessary cooperation in current affairs among the various departments concerned in the Four Year Plan, the Generalrat (General Council) will remain in existence. The General Council has to take care of the necessary connections and has to organize the tasks according to uniform points of view. In the General Council, the individual plannings of the ministries will be put into accord with one another and then combined into a total planning."

Only about a month after the issuance of this decree Austria was invaded by the Reich forces.

While there does not seem to be any direct evidence to show that Koerner knew of the exact date of the invasion of Austria, it is quite evident that he knew that such an invasion was in contemplation, for on 17 March 1937 Koerner was present at a meeting conducted by Goering with respect to production of iron and steel. The minutes of such meeting indicate that among other things Goering stressed (*NI–090, Pros. Ex. 966*)—

"1. Present supply for the various native and foreign sources.

"2. Supply which may be anticipated at present and in A-case in the immediate future.

"3. Supply from native German soil to which in A-case receipts from Austria with all her possibilities are to be added.

* * * * * * *

"Goering continues: Also in *Austria* there are still many deposits which must be taken care of."

* * * * * * *

"Thereby he arrived at the critical question of *German low-grade iron* ores. The question of profitableness must be entirely disregarded here, although industry is otherwise bound by [it. It is a proposition similar to that when] an armaments firm which by utilizing its capacity for a normal level of production cannot exceed a certain limit of production is nevertheless instructed to expand, although no economic results can be expected. Nevertheless, this must happen. He is purposely leaving aside the question of how far the iron industrialists can carry this out themselves and to what extent they must receive aid. If vital plants are involved of which the State cannot demand so much that the firms would be ruined, then the State

must help, because these measures would have to be prepared for under all circumstances. It does not differ from the case of the production of explosives or guns where one can just as little inquire about profitableness. The same point of view applies to low-grade iron ores.

* * * * * * *

"In this respect it is important that the soil of Austria is reckoned as part of Germany in case of war. Such deposits as can be acquired in Austria must be attended to in order to increase our supply capacity. Austria is rich in ore." [Emphasis supplied.]

That Koerner regarded such invasion of Austria as a proper act was subsequently admitted by him, for in October 1943 he stated:

"I always considered the Austrian question as a problem which Hitler would solve as early as possible at a suitable moment. In the spring of 1938 the situation was ripe and we could march into Austria without large military preparations."

Immediately following the invasion of Austria it appears that Koerner was instrumental in accelerating the production of munitions of war. It is claimed that this was for defensive purposes only, and he persists that Goering warned Hitler against actions that would lead to war. Meanwhile, however, Goering was urging the construction of bombers capable of carrying a bomb load of 5 tons to New York and then returning. Koerner admits that he knew of this activity of Goering's.

It appears on 14 October 1938 at a secret meeting of the air ministries at which Koerner was present, the notes indicate that Goering stated (*1301–PS, Pros. Ex. 971*):

"The armament should not be curtailed by the export activity. He received the order from the Fuehrer to increase the armament to an abnormal extent, the air force having first priority. Within the shortest time the air force is to be increased fivefold, also the navy should get armed more rapidly, and the army should procure large amounts of offensive weapons at a faster rate particularly heavy artillery pieces and heavy tanks. Along with this manufactured armaments must go; especially fuel, powder, and explosives are moved into the foreground. It should be coupled with the accelerated construction of highways, canals, and particularly of the railroads.

"To this comes the Four Year Plan which is to be reorganized according to two points of view.

"In the Four Year Plan in first place, all the constructions which are in the service of armament are to be promoted; and in second place, all the installations are to be created which really spare foreign exchange."

It appears also that in February 1938 Koerner extended to the Fuehrer an unconditional pledge "that German economy will actually obtain her goal as set by him."

With respect to the invasion of Czechoslovakia which took place on 15 March 1939, the evidence shows conclusively that Koerner was aware of the impending aggression sometime before it occurred. Here again he asserts it was Goering who told him that Hitler was going to occupy Prague, and that Goering was opposed to the contemplated action as he feared it would lead to war. In this connection it is again well to remember that the IMT findings are to the effect that Goering admitted that he had threatened to bomb Prague if President Hacha of Czechoslovakia did not submit.

In evidence is a note relative to a conference of 25 July 1939 conducted by Goering and in which Koerner was present. This shows that (*R–133, Pros. Ex. 972*)—

"In a rather long statement the Field Marshal explained that the incorporation of Bohemia and Moravia into the German economy had taken place, among other reasons, to increase the German war potential by exploitation of the industry there."

Koerner in his testimony before this Tribunal on 30 July 1948 admitted remembering that Goering had mentioned Bohemia and Moravia, but insisted that he did not understand the situation to be as indicated in the note. But Koerner, during such testimony, went on to admit (*Tr. p. 14154*):

"For the rest, the situation was so threatening that it seemed a matter of course to us that the military potential of the Protectorate which we now had and which was not being exploited would have to be exploited."

A short time after the invasion of Bohemia and Moravia, the General Council, at a meeting presided over by Koerner on 28 April 1939 received a report which, among other things, stated (*EC–282, Pros. Ex. 957*):

"In other words, *the economic area of greater Germany is too small to satisfy the military economic requirements as to mineral oil,* and the newly and successfully taken up contact with *southeastern Europe* shows us the only and hopeful possibility *to ensure* supplies for the mineral oil economy completely

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for many years by securing this area by means of the Wehrmacht.

* * * * * * *

"It is essential for Germany to strengthen its own war potential as well as that of its allies to such an extent that the coalition is equal to the efforts of practically the rest of the world. *This can be achieved only by new, strong and combined efforts by all of the allies, and by expanding and improving the greater economic domain* corresponding to the improved raw material basis of the coalition, *peaceably at first, to the Balkans and Spain.*

"If action does not follow upon these thoughts with the greatest possible speed, all sacrifices of blood in the next war will not spare us the bitter end which already once before we have brought upon ourselves owing to lack of foresight and fixed purposes." [Emphasis supplied.]

That the planning of the General Council was for aggression and not for defensive purposes seems clear from this exhibit. Testimony before this Tribunal on 30 July 1948 shows that the foregoing report was submitted to the General Council by one Dr. Krauch in his capacity as Plenipotentiary General for chemical production. In testifying with respect to such document the defendant Koerner indicated that he remember it, but claimed that it was not reported or read to the General Council in its present form. He claimed that the "political remarks which are contained in the draft" were not read by Krauch. In view of the fact that this particular report as introduced consists of approximately 50 legal-sized pages, this display of memory is nothing short of remarkable, especially in view of the fact that the witness in other phases of his testimony exhibited a not especially retentive memory. Illustrative of this lack of memory on details is the testimony as given on 4 August 1948 with respect to a meeting with the traitor Quisling. In the course of the [cross-] examination by counsel he was questioned with respect to the support which was being contemplated for Quisling, and he was asked the question (*Tr. p. 14697*):

"What forms of assistance or support were discussed?"

To this he answered:

"Of course today I wouldn't be able to recollect the details any longer."

In August 1939 Koerner admits he was told by Goering that Hitler then had decided to attack Poland, and again Goering is alleged to have indicated that he was opposed to the contemplated

move. It appears, however, that the defendant's attitude as a witness is such that his assertions as to Goering's attitude cannot be accepted without reservation. The defendant has admitted that under certain conditions he will not as a witness tell the whole truth. We refer to his examination before this Tribunal with respect to his having been a witness before the International Military Tribunal when his former chief, Goering, was on trial. We quote from Koerner's testimony on said matter (*Tr. p. 14717*):

"I think that I did give a certain clarification there. Of course I did so in a more cautious manner than now because at that time I was a witness on behalf of Goering and I had to take certain considerations into account in behalf of my old chief. I didn't defend him, but I gave certain statements which I believe were capable of exonerating him, so far as I was able to exonerate him. That's the way you have to look at these things."

The evidence indicates that Koerner participated in the planning and preparation of the aggression against Russia. It appears from the evidence that actual planning against Russia commenced in the winter of 1940. General Thomas, former head of the military economic office and the armament office of the High Command of the Wehrmacht, in his "Basic Facts for History of German War and Armaments Economy," made the following entries (*2353–PS, Pros. Ex. 1049*):

"In November 1940, the Chief of Wi. Rue, together with Secretaries of State Koerner, Neumann, Backe, and General von Hanneken were informed by the Reich Marshal of the action planned in the East.

"By reason of these directives the preliminary preparations for the action in the East were commenced by the Office of Wi. Rue at the end of 1940.

"The preliminary preparations for the action in the East included first of all the following tasks:

"(1) Obtaining of a detailed survey of the Russian armament industry, its location, its capacity, and its associate industries.

"(2) Investigation of the capacity of the different big armament centers and their dependency one on the other.

"(3) Determine the power and transport system for the industry of the Soviet Union.

"(4) Investigation of sources of raw materials and petroleum (crude oil).

"(5) Preparation of a survey of industries other than armament industries in the Soviet Union.

"These points were concentrated in one big compilation of 'War Economy of the Soviet Union' and illustrated with detailed maps, etc.

"Furthermore a card index was made containing all the important factories in Soviet Russia and a lexicon of economy in the German-Russian language for the use of the German war economy organization.

"For the processing of these problems a task staff, Russia, was created, first in charge of Lieutenant Colonel Luther, and later on in charge of Brigadier General Schubert. The work was carried out according to the directives from the chief of the office, respectively the group of departments for foreign territories (Ausland) with the cooperation of all departments, economy offices, and any other persons possessing information on Russia. Through these intensive preparative activities an excellent collection of material was made, which proved of the utmost value later on for carrying out the operations and for administering the territories."

We should here remind ourself that the invasion of Russia commenced 22 June 1941.

One Gustav Schlotterer, who between 1941 and 1944 was a Ministerial Director in charge of the Eastern Department of the Ministry of Economics and as a deputy was a representative of such Ministry in the Economic Staff East, testified before the Tribunal on 12 February 1948 as follows (*Tr. p. 1787*):

"A. It must have been either in March or at the beginning of April 1941 when General von Hanneken asked me to come and see him. He told me that in a conference with State Secretary Koerner the formation of an economic staff, for the event of a possible occupation of eastern territories in Russia, was being decided upon. General Schubert was to be put in charge of that staff, whereas I, myself, was to represent the Reich Ministry of Economic Affairs on the staff. Would I therefore please contact General Schubert.

"Q. Under what name was the proposed organization to be?

"A. It was supposed to be called Economic Staff Oldenburg.

"Q. Was that the code name?

"A. Yes.

"Q. Was this code name kept secret?

"A. It was restricted to internal communications between governmental departments only inasfar as it was necessary to call in government departments at all."

In testifying before the Tribunal on 30 July 1948 Koerner admitted that he had advance notice of the planned attack on Russia.

A memorandum of a conference of army officers in the office of General Thomas on 28 February 1941, which bears the heading, "Re Oldenburg," among other things, states (*1317–PS, Pros. Ex. 1051*):

> "The general ordered that a broader plan of organization be drafted for the Reich Marshal. Essential points—
>
> "(1) The whole organization to be subordinate to the Reich Marshal. *Purpose*—Support and extension of the measures of the Four Year Plan."

It appears that on 19 March 1941 General Thomas made a memorandum of a report to Goering relative to Organization Barbarossa, which was the code name for the contemplated operations in Russia. Such memorandum states in part (*1456–PS, Pros. Ex. 1050*):

> "The following matters were the subject of the report:
>
> "(1) Organization Barbarossa.
>
> "The Reich Marshal fully agrees with the organization which was proposed to him. The following persons shall become members of the executive staff: Koerner, Backe, Hanneken, Alpers, and Thomas.
>
> "The Economic Armament Office will be the executive office.
>
> "The Reich Marshal considers it important that a uniform organization be created. He agrees that individual agencies will be under the leadership of officers, particularly General Schubert. The heads of the economic inspectorates, the Reich Marshal wants to see in person. Hanneken is asked to propose the best qualified personalities of industry and business.
>
> "(2) The Reich Marshal approved of the regulations worked out in Economic Armament Office for destructive measures by the air force in case Barbarossa. A copy was given to Captain von Brauchitsch for forwarding it to the general staff of the air force."

Bearing on Koerner's participation in the planned aggression against Russia is a report, dated 28 June 1941, "On the Preparatory Work in Eastern European Questions" and apparently emanating from Alfred Rosenberg, which report alludes to many conferences relative to the war economic intentions of the Economic Operational Staff East. The report states that in connection therewith "almost daily conferences were then held with Dr. Schlotterer * * *. It also states (*1039–PS, Pros. Ex. 367*):

"In this connection I had conferences with General Thomas, State Secretary Koerner, State Secretary Backe, Ministerial Director Riecke, General Schubert, and others. Far-reaching agreement was reached in the eastern questions as regards direct technical work now and in the future."

It is indeed significant that the minutes of a General Council meeting held on 24 June 1941, presided over by Koerner, recited that (*NI–7474, Pros. Ex. 582*):

"State Secretary Koerner opened the meeting and stated that owing to preparations for the case of war with Russia (Eventualfall 'Russland'), the convocation of the General Council had to be omitted up to now. Since the fighting in Russia has now started, he was able to make the following statements about the work which has been done within the Economic Operations Staff East:

"The entire economic command in the newly occupied eastern territories is in the hands of the Reich Marshal as Plenipotentiary for the Four Year Plan. The Reich Marshal is to make use of the services of the Economic Operations Staff East, which consists of the representatives of the leading departments. The measures are to be carried out by the Economic Staff East under the leadership of Lieutenant General Schubert, who is supported for the industrial sector by Ministerialdirigent Dr. Schlotterer, and for the agricultural sector by Ministerialdirektor Riecke.

"The economic command in the newly occupied territories should direct its activities to extracting the maximum quantities of goods required for the war effort, particularly steel, mineral oil, and feed. All other points of view should take second place.

"The necessary organization is in existence and will be utilized in accordance with the progress of military operations."

It should be noted that the above-mentioned meeting of the General Council was held just 2 days after the invasion of Russia.

We have specifically alluded to but a small portion of the voluminous evidence introduced with respect to these matters, but the foregoing and other evidence in the record satisfies the Tribunal beyond reasonable doubt that defendant Koerner participated in the plans, preparations, and execution of the Reich's aggression against Russia.

The defense sought to establish that the attack against Russia "was not an illegal aggression but a permissible defensive attack."

Concerning such defense it is sufficient to call attention to the following statement of the IMT: *

> "It was contended for the defendants that the attack upon the U.S.S.R. was justified because the Soviet Union was contemplating an attack upon Germany and making preparations to that end. It is impossible to believe that this view was ever honestly entertained.
>
> "The plans for the economic exploitation of the U.S.S.R. for the removal of masses of the population, for the murder of commissars and political leaders, were all part of the carefully prepared scheme launched on 22 June without warning of any kind, and without the shadow of legal excuse. It was plain aggression."

The Tribunal finds the defendant Koerner guilty under count one.

PLEIGER

There is no evidence which tends to assert that Pleiger had any knowledge of or took any part in the plans, initiating, or waging of aggressive war. His field of activities was wholly in the economic and industrial field. He of course had knowledge that Germany was rearming, and the development of the iron ore field at Salzgitter, and of the Hermann Goering Works there, which were organizations entirely the children of his brain and the result of his energy. But, as was determined by the International Military Tribunal, rearmament, in and of itself, is no offense against international law. It can only be so when it is undertaken with the intent and purpose to use the rearmament for aggressive war.

That proof is here lacking, and we therefore acquit the defendant Pleiger under count one.

COUNT TWO—COMMON PLAN AND CONSPIRACY

The defendants von Weizsaecker, Keppler, Bohle, Woermann, Ritter, von Erdmannsdorff, Veesenmayer, Lammers, Stuckart, Darré, Meissner, Dietrich, Berger, Schellenberg, Schwerin von Krosigk, Koerner, and Pleiger are charged as leaders, organizers, instigators, and accomplices in a common plan and conspiracy to commit, and which involved the commission of crimes against peace, including war crimes and crimes against humanity.

On motion of the prosecution, the defendants Bohle, von Erdmannsdorff, and Meissner were dismissed from this count.

* Trial of the Major War Criminals, op. cit., volume I, page 215.

The Tribunal is of the opinion that no evidence has been offered to substantiate a conviction of the defendants in a common plan and conspiracy, and all the defendants charged therein are hereby acquitted.

COUNT THREE—WAR CRIMES, MURDER, AND ILL-TREATMENT OF BELLIGERENTS AND PRISONERS OF WAR

Count three charges the defendants von Weizsaecker, Steengracht von Moyland, Ritter, Woermann, Lammers, Dietrich, and Berger with the commission of war crimes, in that they participated, were principals in, accessories to, ordered, abetted, and took a consenting part, and were connected with plans and enterprises involving, and were members of organizations and groups connected with the commission of war crimes, particularly in atrocities and offenses against prisoners of war and members of the armed forces then at war with the Third Reich, or which were under belligerent control of or military occupation by Germany, including, murder, ill-treatment, enslavement, brutalities, cruelties, and other inhumane acts; that prisoners of war and belligerents were starved, lynched, branded, shackled, tortured, and murdered in flagrant violation of the laws and customs of war, and through diplomatic distortion, denial, and fabricated justification, the offenses and atrocities were concealed from the Protecting Powers; that included in the crimes thus mentioned were the following incidents:

a. A policy whereby the civilian population of Germany was urged to lynch English, American, and other Allied fliers who had been forced by military operations to land in Germany, and that those not so lynched were upon capture to be classified as criminals and turned over to the SD for "special treatment," which meant execution, thus circumventing the intervention of Protecting Powers, and as a result of this policy American, English, and other Allied fliers were lynched by the German civilian population, or murderer by the SD;

b. The murder of Allied commando units, even though they had surrendered, and informing the Protective Powers through diplomatic channels that these troops had been killed "in combat";

c. The murder of 50 fliers of the British Royal Air Force who had been captured after escaping from a prisoner-of-war camp;

d. The murder of the French General, Mesny, who was a prisoner of war;

e. Forced marches of American and Allied prisoners of war in severe weather without adequate rest, shelter, food, clothing,

and medical supplies, resulting in great privation and death to many thousands of prisoners.

On motion of the prosecution the defendant von Erdmannsdorff was dismissed from this count.

DIETRICH

The indictment charges that Dietrich issued a directive that all newspapers were to withhold from publication any mention of the lynching of Allied fliers who bailed out over Germany. The only evidence offered against him is a Tagesparole (daily press directive) issued by him as the Reich press chief on 28 December 1943 which reads as follows (*NG–3327, Pros. Ex. 1225*):

> "(2) The further material on hand regarding the cynical utterances of our enemies on the air war is to be emphasized with full force, thus underlining once again England's responsibility for terror methods in the conduct of the war. In so doing, the case of the American Murder Corporation is to be brought up once again as proof.
>
> "Explanation to (2) * * * . In connection with the material already on hand on this subject—among other things a new congratulatory message of Churchill's for the Anglo-American terror fliers has been published—it must be established that the war criminal Churchill will one day receive his punishment for his historical guilt. *In commenting, it must furthermore be observed that nothing must be mentioned on the subject of reprisals on our part, or of retaliation.*" [Emphasis supplied.]

Whether or not the portion underlined [*italicized*] was a part of the Daily Parole, as ordered, suggested, or approved by Dietrich, or was appended by someone else is, in our opinion, immaterial. The phrase is open to several constructions.

(1) That public clamor was not to be aroused to demanding such reprisals and retaliations, or

(2) That although acts of reprisal and retaliation had occurred or were to be indulged in, the press should keep silent on the subject, or

(3) That a final decision had not been made whether or not such acts should be encouraged.

It is significant that although Himmler on 10 August 1943 ordered that the chiefs of the regular and security police and the Gauleiter be informed that "it is not the task of the police to interfere in clashes between Germans and English and American terror fliers who have bailed out," the program of lynching does not appear at that time to have been clearly defined, or to have

received official encouragement, and that the latter did not occur until the early months of 1944.* There is no evidence either that Dietrich had knowledge of Himmler's secret order, knowledge of any previous or prospective lynching of Allied fliers, or that the comment in the Daily Parole had any connection with it.

The evidence against Dietrich is insufficient and inconclusive, and he must be acquitted on count three.

RITTER

The defendant Ritter's alleged participation in the murder of bailed-out Allied fliers arises from his position as Foreign Office liaison representative with the Wehrmacht. He received Keitel's top secret letter of 15 June 1944, in which the latter stated that for the publication of those cases of capture by the armed forces or the police for special treatment, that is murder by the SD, it was necessary to clearly determine what facts should be regarded as evidence of the criminal action, and established the following, which was to serve also as an instruction to the commander of the reception camp for aviators at Oberursel, namely (*730–PS, Pros. Ex. 1233*)—

> "* * * where an investigation disclosed that it would be indicated to separate the offender, * * * or to hand him over to the SD:
>
> "(1) Strafing civilians, either individuals or crowds;
>
> "(2) Firing on German air crews while suspended in parachutes after having been shot down;
>
> "(3) Strafing regular passenger trains;
>
> "(4) Strafing military hospitals, hospitals, and hospital trains which are clearly marked with the Red Cross."

Keitel stated that inasmuch as in drafting publications of such actions, protests on the part of the enemy were to be expected, and it was intended that in agreement with the Secret Police, the SD, and the Ob. d. L. (commander in chief, Luftwaffe) until further notice, prior to each publication, agreement should be reached between the OKL West, the Foreign Office, and the SD as to the facts, time, and form of announcement.

The Foreign Office was requested to confirm, before 18 June, its agreement with the definition and with the intended procedure.

On 18 June Ritter telephoned the office of the Supreme Command, stating that the opinion of the Foreign Office could not be made known before the night of the 19th, as Ritter would have to check with Berlin. On 25 June he submitted to the Supreme

* Trial of the Major War Criminals, op. cit. supra, volume IV, page 49.

Command of the Armed Forces a draft of reply which had been submitted to but not yet approved by von Ribbentrop who would be absent for several days.

The draft stated that in spite of obvious objections founded on international law and foreign politics, the Foreign Office was in basic agreement with the proposed measure; that in the examination of the individual cases, a distinction must be made between cases of lynching and "special treatment" by the SD; that "in cases of lynch law" no Germany agency could be directly responsible, because death would have occurred before the agency was concerned in the matter, and the circumstances would be of such a general nature that it would not be difficult to present the case in a suitable manner when published; that as to "special treatment" by the SD, subsequent publications would be tenable if Germany took this opportunity to declare itself free from the obligations imposed by international agreement which it there still recognized; that when an enemy airman had been captured by the armed forces, or the police, and delivered to a prisoner-of-war camp, he thereby acquired the legal status of a prisoner of war, and the Geneva Prisoner-of-War Convention of 27 July 1929 applied; that any attempt to disguise an individual case by clever wording of publication would be hopeless; that the Foreign Office was unable to recommend a formal repudiation of the Geneva Convention; that an emergency solution would be to prevent the suspected fliers from ever attaining the status of prisoners of war by informing them immediately that they were not regarded as prisoners of war, but as criminals, and delivering them, not to the prisoner-of-war camp, but to authorities competent for the prosecution of criminal acts to be tried by special summary procedure established *ad hoc;* that if, during these proceedings, special circumstances are revealed disclosing that this procedure was not applicable to the particular airman, individual cases might be subsequently transferred to the legal status of prisoners of war and sent to the reception camp.

The memorandum further stated that naturally, even this expedient would not prevent Germany from being accused of violating treaties, nor constitute a safeguard against reprisals upon German prisoners of war, but the proposal would relieve Germany of openly renouncing international agreements or, in individual cases, making excuses which no one would believe; that the alleged offenses under items 2 and 3 of the proposed definition were not legally unobjectionable, but the Foreign Office would be willing to disregard the fact. Finally, the memorandum stated, that the main weight would have to be placed on lynchings and

should the campaign be carried out to such an extent that the purpose of deterring enemy fliers was actually achieved, then the strafing attacks by enemy fliers must be exploited for propaganda purposes in a more definite manner than heretofore, if not for home publicity, then certainly for the propaganda effect abroad.

On 29 June Ritter advised General Warlimont of the OKW Operations Staff that the Minister of Foreign Affairs had approved the draft but ordered his liaison officer assigned to the Fuehrer headquarters to present to Hitler the Foreign Office's attitude before the letter was sent to the chief of the Supreme Command of the Armed Forces, and that Hitler's approval of the principles established by the Foreign Office must be obtained.

On 4 July Hitler issued a directive that notice be served by radio and the press that every enemy agent shot down while participating in attacks against small localities without war economic or military value was not entitled to treatment as a prisoner of war, but would be killed as soon as he falls into German hands, but that nothing was to be done at the moment, and the measures of this sort were only to be discussed with the legal section of the OKW and with the Foreign Office.

Tribunal V in Case 12,* based on contemporaneous captured documents, found that this program was actually carried out and that the chief of the OKW issued an order stating that it had recently happened that soldiers had protected English and American terror fliers from the civilian population, thus causing justified resentment, and directing that soldiers should not counteract the civilian population in such cases by claiming that enemy fliers be handed over to them as prisoners of war and by protecting them; thus ostensibly siding with the enemy terror fliers.

We have considered Ritter's explanation that the letter from the OKW of 15 June should not have been channeled through him but should have been sent directly to the Foreign Office, and that he did not prepare the Foreign Office reply of 25 June which he transmitted to the chief of the OKW, and that his typewritten signature thereto was due to a mistake of his stenographer's which he corrected by striking a line through it and writing at the head of it the word, "draft." An examination of the document reveals that the typewritten signature is so erased and that the word "draft" is so inserted in longhand. The draft, however, discloses that it was prepared in his office, and bears one of his file numbers. The absence of any of the usual Foreign Office symbols indicating the section or Referat which prepared the draft is significant.

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* United States vs. Wilhelm von Leeb, et al., volumes X and XI, this series.

Members of the armed forces of any nation who violate the rules of war are subject to trial and punishment by enemy military authorities either during or after hostilities. Here, however, both the procedures and methods proposed by the Wehrmacht and the Foreign Office were contrary to and in violation of the Hague Rules of Land Warfare. It was the duty of Germany to protect captured soldiers and airmen of the enemy against lynch law. Where a captured enemy is suspected or charged with violation of the rules of war, he has the right to be tried in accordance with those rules. The proposals of the Wehrmacht and of the Foreign Office violated these rights.

We do not regard Ritter as a mere messenger boy. He was selected to occupy a position of considerable delicacy, requiring knowledge and experience. While he did not originate this policy of murder, he implemented it, and although he played a comparatively minor part, it is one which involves criminal responsibility on his part.

We therefore find him guilty under count three with respect to this incident.

Having learned of the execution, near Egersund, Norway, of British fliers who had crash-landed in Norway, the British Government, through its Protecting Power, Switzerland, inquired as to whether or not the reports regarding the matter were true, and if so, whether such action on the part of the German armed forces was based on some order or instruction of the German High Command, calling attention to the fact that such an act would be in violation of the rights of prisoners of war under international law. Before the receipt of the Swiss inquiry, the Foreign Office learned that a protest was about to be made, having monitored a message from the British Government to its Embassy in Switzerland. Ritter testifies that he was informed by von Ribbentrop that a representative of the OKW would visit him and give him written information with respect to the incident, discuss it with him, and that thereafter Ritter should report to von Ribbentrop.

Apparently, before Ritter discussed the matter with the OKW it had been submitted to Hitler. The memorandum of 10 May 1943 issued by the OKW Operations Staff, states (*NG–2572, Pros. Ex. 1221*):

> "In the event that a protest should be received by the German Government from the Protecting Power, the Fuehrer wishes the reply to be in the following sense."

It was handed to Ritter personally on 11 May by Major Kipp, who had instructions to submit the document, together with certain

secret orders of 18 and 19 October 1942 and a summary of the Egersund incident.

This proposed reply was a clear evasion of the inquiry. It states: first, that enemy soldiers in uniform carrying out tasks of an obviously military nature would be treated in accordance with the Geneva Convention, and second, that enemy soldiers dropped behind German lines for "treacherous sabotage purposes" and who, judging from their appearance are not in regular uniform, or wear civilian clothing, or are equipped with treacherous weapons, will, as publicly announced, be slaughtered in combat without pardon.

Ritter made several suggested changes in the draft, the most important of which is as follows (*NG–2572, Pros. Ex. 1221*):

> "However, members of the enemy powers who infiltrate behind the fighting front in order to commit insidious sabotage acts and carry out such acts by using treacherously concealed weapons, or are in civilian clothes, or in any other unsoldierly manner, are not to be treated as soldiers, but slaughtered without pardon."

Thus, the words "in combat" were deleted. He submitted this to the OKW on 17 May 1943, and General Warlimont suggested that the words "camouflage clothing" be used instead of "civilian clothing," and noted that the words "in combat" were missing. Ritter informed the OKW that in the event of its approval he intended to submit the draft to von Ribbentrop who was not yet informed of the reply planned by Ritter, and who would submit it to Hitler for his approval before dispatch. The OKW on 20 May informed Ritter that the omission of the words "in combat" might cause difficulties, and Ritter agreed to draw von Ribbentrop's special attention to this.

On 24 May Ritter informed the OKW that its request for amendment had been complied with, and furthermore that the words "in combat" had been added; that Hitler, after verbal report by von Ribbentrop, had approved the note as amended. On 25 May Ritter wrote the OKW enclosing a copy of the approved draft, and it was accordingly dispatched by the Foreign Office under teletype instructions given by Ritter in von Ribbentrop's name.

Ritter explains that when Major Kipp called on him with the Commando Order of 18 October 1942 he protested that it (the Commando Order) was a monstrosity and a violation of international law and of humanity; that Kipp agreed with him, stating that this was also the view of the OKW, but that nothing could be done because it was a Fuehrer order; that he, Ritter, deleted from

the draft of the reply the words "in combat" because it was not the truth; that inasmuch as in the Egersund case the British soldiers had surrendered, he assented to its reinsertion because the proposed reply did not answer the British inquiry as to whether the executions had taken place, but merely their second inquiry as to whether it had been an order or instruction of the German High Command. He further insists that when he reported to von Ribbentrop he urged him to endeavor to persuade Hitler to withdraw the Commando Order, and that von Ribbentrop agreed to talk to Hitler about it. He asserts that he did not know of the secret Commando Order itself until he received a copy of it from Major Kipp in May 1943, although he had probably heard the OKW radio announcement of 7 October 1942.

The prosecution does not contend that Ritter had any part in the issuance of the Commando Order or knew of its existence prior to May 1943. It clearly appears that the unfortunate British soldiers had been murdered in cold blood by the military command in Norway months before Ritter had any knowledge. It cannot be said that he had any connection with either the order or the incident. It is likewise clear that he endeavored to have the lying words "in combat" removed from the reply. The facts do not establish guilt, and he is acquitted with respect to this incident.

BERGER

The indictment charges that the defendant Berger received a copy of the Bormann circular of 30 May 1944 regarding Allied fliers heretofore mentioned. It is not alleged and there is no evidence that he took any action with respect to it. Knowledge that a crime is proposed is not sufficient. A defendant may only be convicted because of acts he has committed or his failure to act when it was his duty to have done so. The evidence does not disclose that Berger had any duty to perform with respect to such matters.

The defendant Berger is therefore acquitted as to the charge of being a participant in the murder of Allied fliers who had bailed out over Germany.

The indictment charges that between September 1944 and May 1945, hundreds of thousands of American and Allied prisoners of war were compelled to undertake forced marches in severe weather without adequate rest, shelter, food, clothing, and medical supplies; that such forced marches, conducted under the authority of the defendant Berger, chief of Prisoner-of-War Affairs, resulted in great privation and deaths to many thousands of prisoners.

The preamble of the Geneva Prisoner-of-War Convention of 27 July 1929 recites:*

"* * * recognizing that in extreme case of war it will be the duty of every power to diminish as far as possible the inevitable rigors thereof and to mitigate the state of prisoners of war * * * have decided to conclude a Convention to that end * * *."

Article 2 of the Convention provides:

"They [prisoners of war] must at all times be humanely treated and protected, particularly against acts of violence, insults, and public curiosity. Measures of reprisal against them are prohibited."

Article 7.

"Prisoners of war shall be evacuated within the shortest possible period after their capture, to depots located in a region far enough from the zone of combat for them to be out of danger. Only prisoners who, because of wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept in a dangerous zone.

* * * * * * *

"Evacuation of prisoners on foot may normally be effected only by stages of 20 kilometers daily unless the necessity of reaching water and food depots require longer stages."

The right of a belligerent to evacuate prisoners to avoid their release by enemy troops is unquestioned; the duty to remove them from combat and dangerous zones is clear. The first involves the right of the capturing power, and the second its obligation and responsibility toward the prisoners in order to mitigate their fate and to provide for their safety. However, the right to evacuate can only be exercised when it can be accomplished without subjecting evacuees to dangers and hardships substantially greater than would result if they were permitted to remain at the place of imprisonment, even if thus they might be rescued by the approaching enemy.

A belligerent may no more subject evacuees to mistreatment or hunger, or otherwise endanger their lives by means of forced marches, than he may rightfully do so under other circumstances. When such a situation is in prospect the right to evacuate ceases.

The duty to evacuate does not exist when the dangers from evacuation are greater than those to be apprehended if the evacuation does not take place. The Geneva Convention requires

* Geneva (Prisoner of War) Convention of 27 July 1929; United States Army TM 27–251, Treaties Governing Land Warfare (United States Government Printing Office, Washington, D.C.), page 65.

evacuation in order to insure the safety of the prisoners. Where this objective is not attainable the duty to evacuate ceases.

The only affidavit submitted with respect to the northern evacuations by any prisoner involved in the forced marches is an affidavit by Thurston Hunter, an English prisoner of war, who deposes that he, with 800 British prisoners of war, was marched from Stalag XX–A, evidently near Thorn [Torun], Poland, to Lehrte, near Hannover, in northwestern Germany. The privations suffered and the mistreatment inflicted, as described in this affidavit, were extreme. However, the affidavit was received on the condition that the affiant be produced for cross-examination. This was not done, and no reason or excuse has been offered for the prosecution's failure so to do. There is no corroboration of the affiant from any other source, and under these circumstances the Tribunal does not feel justified in finding guilt upon this unsupported affidavit.

The evidence with regard to the marches from Silesia through Bohemia and Moravia into Bavaria, involving some 100,000 men, rests upon the testimony of Meurer, von Steuben, and Detmering. From their testimony it appears these prisoners had been previously held in Silesia and were marched from the vicinity of Neisse and from the neighborhood of Ratibor. With minor exceptions the whole mass of men was marched across the mountains of the Protectorate in January and February, and thence into Bavaria, a distance of several hundred kilometers. The evacuations were occasioned by the rapid advance of the Russian armies. The original plan was to evacuate them in an orderly manner by rail toward the northwest. This became impractical inasmuch as one of the main rail lines was under enemy fire and the others were required for the passage of troops and supplies to the front. Protests against the march were made by General Detmering, prisoner-of-war commander for Military District VIII, because of the lack of means of transportation and accommodations, food, and the insufficiency of clothing in view of the below zero temperature.

Frank, the Governor of the Protectorate, together with the Plenipotentiary of the Wehrmacht in the Protectorate, and von Steuben, joined in this protest because of the fear of disturbances in the Czech population and the dangers of attempts to liberate the prisoners, and because there was not sufficient food supplies in the country through which they were to march. These protests were lodged with Colonel Meurer, Berger's chief of staff, and were communicated to the latter. Berger claims that he protested to Hitler but that he was without power or authority to countermand or avoid the order, and had no facilities, even if

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he had the power, to attempt any negotiations with the commanders of the Russian Army. He also insists that the large proportion of the Russian prisoners did not desire to be turned back to the Russian armies because of fear that they would be punished as traitors. He cites two instances where it is claimed that injured and sick Russians left in a camp under charge of German medical orderlies were, with the medical orderlies, murdered by the advancing Russians, and that news of this increased the fears of the remainder of the prisoners.

We find it to be true that the prisoners on this march suffered severe privations, both from the cold and from the lack of food and other necessary accommodations. According to the testimony of the witness von Steuben, the death of 200 prisoners was reported at one time, and Meurer admits that he knew and reported to Berger that some of the Russian prisoners had died of exhaustion. There is, however, no satisfactory evidence as to the actual losses thus sustained. No prisoner who was compelled to make the march was called as a witness. The state of the record is, therefore, unsatisfactory. Substantial casualties on protracted marches are not unusual even among well fed troops, and would undoubtedly be larger where the march is undertaken by prisoners of war who have long been in confinement, even though properly cared for during that period.

Berger's actions are not to be judged by after-acquired knowledge, but by what he then knew or had reason to believe, and the conditions with which he was then faced. That a state of emergency existed is quite clear. German rail communications at that period of the war, and particularly in the East, were greatly disrupted. That the Russian advance was extraordinarily rapid, and that the German front in the East was rapidly dissolving is likewise well known. We find that he had a choice of two alternatives: either to leave the prisoners to the Russian Army, or to evacuate them by the march in question. If he left them, for a time at least, they were bound to be in a zone of active military operations and subjected to extreme danger.

We do not hold that they would have suffered if they fell in the hands of the Russian armed forces, although the prosecution has offered no evidence to the contrary. It is sufficient if Berger honestly believed, even though it may have been unfounded, that the prisoners were in as great, if not greater danger, if left in their camps as those to be encountered by marching. There is no evidence to contradict his testimony in this respect. The uncontradicted evidence is that, to the best of his ability, food, clothing, medical care were furnished the prisoners, inadequate though this was. We may have justified suspicion as to parts of his story,

but suspicion does not take the place of evidence, and certainly does not constitute proof of guilt beyond reasonable doubt.

For the foregoing reasons we find that the charge against Berger in this respect is not proved, and he must, therefore be acquitted.

The Mesny murder.—On 19 January 1945 the French general, Mesny, in company with several other French general officers, was transferred from the prisoner-of-war camp Koenigstein to another camp. While en route he was foully murdered, and information given to the French authorities that he had been killed while attempting to escape. The murder was according to a plan long discussed and matured. It was an act of revenge, practiced on a helpless prisoner of war for the alleged murder of a German general, Brodowski, by the French Maquis. It was not a true reprisal, inasmuch as every effort was made to prevent the world from knowing the facts of the case. It was a plain and outrageous violation of the laws of war, inasmuch as under the Geneva Convention prisoners of war may not be used as subjects of reprisal.

None of the defendants assert that it was either justifiable or excusable. Our sole task then is to ascertain what, if any, part they played in this disgraceful affair.

This murder originated in a Hitler order passed on by Keitel, who was himself enraged over the reported murder of General Brodowski by the French Maquis. According to Meurer, Berger's chief of staff, Keitel obtained a list of three French generals, from whom the victim was to be selected, either from or through the office of the Wehrmacht Inspector for Prisoner-of-War Affairs (General Westhoff's agency). General de Boisse, sometimes described in the testimony as General du Bois, was first selected.

Meurer testified that when Berger's office first learned of the preparatory measures which had taken place between Keitel and General Westhoff's office, and between the latter and the commandant of the Koenigstein camp, and that these had been discussed over the telephone, he called attention to the danger that the matter might leak out prematurely; that he called Berger's attention to this and the latter approved of Meurer's suggestion that Keitel be informed of the facts. This was done and the suggestion made to Keitel that someone else be named. Keitel agreed, and a new list was submitted from which General de Boisse's name was eliminated and that of General Mesny added.

Meurer asserts that he had informed Berger of this by mail and that his letter being returned without comment, he assumed that Berger had seen it. He discussed the matter with Berger on his return, and found that he had not received the communi-

cation, but that he approved of Meurer's action, saying, "because after all, there are no possibilities left." He testifies, however, that Berger knew of the first phase of the matter and was horrified, saying that in no case would he agree to having this murder carried out; that the first orders were addressed to Himmler, as commander in chief of the replacement army, and to the RSHA, with copies to Berger's office and the Foreign Office for information.

The witness further testified that around 12 December 1944 Berger protested to Himmler and unsuccessfully tried to see Hitler, and informed Meurer that, "I hope Himmler will intervene and the whole thing will die"; that when Berger returned to his office early in January 1945, after his Christmas vacation, he felt very optimistic and thought that the whole matter would die out, but around 9 or 10 January, he called Meurer to him and in a highly excitable manner wanted to know whether the preparations originally proposed for the transfer of these prisoners to another camp had been made, from which Meurer knew that something new had come up.

Berger testified that he first heard of the Fuehrer or Keitel's order about 10 November, and this from Meurer, and told Meurer that "very well, if Marshal Keitel wants to shoot to death his imprisoned generals, let him do it alone without us" (*Tr. p. 6334*); that in the 2 weeks which followed he, Berger, was not in his office, having suffered a concussion after being buried in debris as a result of a bombing raid, and that he was ill at least up to 28 November, and that when he returned he discussed the matter with Meurer and said that he, Berger, would first talk to Kaltenbrunner, but that he was unsuccessful in this attempt; that he tried to see Himmler, but was likewise unsuccessful until 12 December when he met Himmler at Ulm; that Himmler reproached him about the matter, and read him a letter from Fegelein, Himmler's liaison officer between the Waffen SS and Hitler, in which Keitel was alleged to have said that he knew Berger would try to prevent the reprisal measure against Mesny, and that Himmler knew that Berger had sabotaged the matter.

Berger did not testify as to what he had done to sabotage it and the documents themselves clearly show that it had not been sabotaged, but that the matter was proceeding according to plan and was being delayed because of an inability to decide upon the manner in which the murder should be committed.

Berger further testified that Himmler left him abruptly, and that he hardly had an opportunity to mention the Mesny case, and that immediately thereafter he sent in his resignation; but on 18 December Himmler called him up and told him that he

thought it over and perhaps Berger was right, and that he would talk to Hitler personally about it, and said that he was writing Berger a Christmas letter, and that he would hear the rest later and Berger would be very pleased; that the Christmas letter had reached Berger on 22 December and said that Himmler had talked to Kaltenbrunner and that the Mesny murder would be delayed and not carried out.

Berger further testified that on 2 January he returned from his Christmas leave, and between 7 and 9 January Fegelein called him on the telephone and said: "The Fuehrer is furious and deeply embittered because the reprisal had not been carried out in spite of his order;" that it had taken more than 3 months to get it carried out; that he had managed to cope with obstinate generals and that he could manage to cope with obstinate SS generals. He states that after this talk with Fegelein, he called up Meurer and told him that Keitel was making new efforts and would try to carry the matter to a finish, and that he, Berger, had to leave immediately to take over the German Volkssturm in Thuringia and attend to other matters, and told Meurer "to look very keenly and let me know"; that he first learned of Mesny's death on 25 or 26 January.

He further testified that while he did not select Mesny's name, nevertheless, when Meurer informed him about it, he was so sure that efforts to have the matter stopped would be unsuccessful that he said: "It does not matter at all whether it is one name or another."

The record does not bear out this claim of inactivity on the part of the defendant and his agency as is shown in the official documents of the Foreign Office. Von Ribbentrop apparently learned of this plan and the part which the Foreign Office was to play in it about 11 November 1944. He, on that date, instructed the defendant Ritter to inform Wagner, chief of Department Inland II, to make sure that nothing happened in the Brodowski matter before Himmler and the SD had agreed with Wagner regarding the "modalities" and the possible later manner of reporting. These instructions Ritter passed on to Wagner on 12 November.

On 13 November Wagner instructed von Thadden to arrange a meeting between himself, Ritter, and Kaltenbrunner, which, however, did not take place. On 14 November Kaltenbrunner's adjutant informed von Thadden that the meeting was probably superfluous because Hitler's order had been annulled in the meantime. This von Thadden reported to Ritter, who stated that this could not be so because Marshal Jodl on the night of 13 November had informed him to the contrary. Von Thadden immediately in-

formed Kaltenbrunner's adjutant that the information which his office had was erroneous, and that the adjutant stated that the Fuehrer order had not been submitted to Kaltenbrunner but to Berger. On the same day von Thadden called Berger's office, found that he was ill and that only Colonel Meurer knew of the matter. He left a message for Meurer to call him at once on the telephone, but as the latter did not do so, von Thadden himself called Meurer who said that strangely enough the orders had not been sent to Berger, but to Juettner, who had asked Berger to hold a French general, whose name was not known, in readiness for eventual measures of reprisal, but that on 13 November Juettner had informed Meurer that the Fuehrer order had been rescinded and that he considered the matter closed.

This information von Thadden immediately passed on to Ritter who asked to be connected with Kaltenbrunner's office. On 17 November Kaltenbrunner informed Wagner that he had just received the order and asked for a discussion as he had been instructed to contact the Foreign Office before taking action, but inasmuch as he was compelled to leave, he asked Wagner to take the matter up with SS Oberfuehrer Panzinger who had been assigned to the task.

On 18 November the proposed discussion took place in which it was agreed that Panzinger would submit the SD proposal to the Foreign Office for comment, as Himmler had ordered that no decision be made without approval of the Foreign Office; that the proposed execution would take place between 27 and 30 November; the preliminary new proposal was to transfer five or six French generals from the Koenigstein camp to another camp, each to go in a separate automobile with an SS guard dressed in Wehrmacht uniform. General de Boisse's car would break down in order to separate it from the others, thus providing an opportunity of shooting the general in the back "while attempting to escape."

On 28 November Bobrick informed Wagner that Panzinger had stated various changes had been made in the program, but that he had spoken to Meurer again and would inform them immediately, and had promised the Foreign Office a plan for the elaboration of the project by the middle of that week.

On 6 December Bobrick wrote Wagner stating that Panzinger had reported in the presence of those concerned in the matter that he had had another detailed conference with Meurer, Berger's chief of staff, concerning requested modifications chiefly in connection with the car question, and that Panzinger would draft his final report before the end of the week and would so inform Himmler.

On 13 December Wagner reported Panzinger's plan of action, viz: To have the senior ranking French general put in the last of the automobiles, as a mark of special attention due his rank; that the cars would bear Wehrmacht insignia but be driven by SS guards dressed in Wehrmacht uniform, and that in the course of the journey the murder would be effected in one of two ways—either during the drive the general's car would be stopped at a suitable spot and he would be killed while "trying to escape" by well aimed shots from behind, or by using a special car which had already been constructed for the purpose, in which the General would sit alone in the back seat, the door would be locked to prevent his jumping out, the windows closed, and odorless monoxide gas introduced into the inner compartment, a few breaths of which would be sufficient to insure death; but that the cause of death would be recognizable because of the coloring of the skin resulting from the poison. Panzinger further said that his suggestions should be submitted to Himmler, and a copy of it sent to the Foreign Office.

On 16 December Bobrick reported to Brenner of von Ribbentrop's office, through Wagner, that the Fuehrer order explicitly permitted various methods of execution, and the only thing that had been fixed was the subsequent press announcement; that the report submitted to Himmler had been signed by the chief of the Prisoner-of-War Affairs (that is, the defendant Berger), and was before Kaltenbrunner for his cosignature, and then it would go to Himmler, and that Wagner's Inland II would receive a copy for von Ribbentrop's information.

On 30 December Kaltenbrunner reported to Himmler stating that the discussion with the chief of Prisoner-of-War Affairs and the Foreign Office had taken place as ordered, and led to the following proposals (giving those contained in Panzinger's report just mentioned): That provision had been made for subsequent proper attention to routine matters, such as reports, autopsy, death certificate, and burial, and the disguise of the SS men as soldiers of the Wehrmacht; that the press notice had been discussed with Wagner of von Ribbentrop's office; that von Ribbentrop desired to talk with Himmler about the matter and expressed the opinion that it must be coordinated in every respect; and finally, that it had been learned that the name of the man in question, the victim, had been mentioned in the course of various long-distance discussions between the Fuehrer headquarters and the chief of Prisoner-of-War Affairs, and the latter had proposed to use another man with the same qualifications, to which Kaltenbrunner had agreed, and intended to leave the choice of the name of the new victim with the chief of Prisoner-of-War Affairs.

On 4 January 1945 Wagner reported to von Ribbentrop, transmitting a copy of Kaltenbrunner's report, stating that assurances had been given that von Ribbentrop would be informed of Himmler's reply prior to the execution of the plan.

On 6 January Schmidt, of the von Ribbentrop office, wrote Wagner that the Foreign Minister wanted to discuss the matter with Albrecht of the legal department, to ascertain what rights the Protecting Power would have in the matter, and to adjust the plan accordingly; and further that the minister thought that the announcement of the incident in the press should, as far as possible, be phrased in the same way as the notes of the occurrence which provoked the plan, so that responsible parties on the other side might clearly recognize the answer to their own move.

On 12 January Bobrick wrote Legation Councillor Krieger of the legal department, informing him of von Ribbentrop's request, and asked that after discussing the matter with Albrecht, the necessary information to the minister be drawn up; that allowance should be made, among other things, for the possible legal rights of General Bridoux's commission, or those of the International Red Cross and other authorities, relating, for example, to an exhumation, post mortem examination, notes to the army information office, report to Bridoux, filing of questionnaires for the International Red Cross, forwarding of personal effects, etc.

On 18 January Krieger of the legal department sent a report to Bobrick on the questions involved. However, as Mesny was murdered on 19 January, it was entirely unlikely that it reached von Ribbentrop before the murder had occurred.

General Westhoff was called and testified that after 1 October 1944 Berger was the senior officer of the whole Prisoner-of-War Affairs, and Keitel and the OKW were negligible factors; that this was the purpose of handing the matter over to Berger; that the OKW for a long time had tried to prevent prisoner of war affairs from being handed over to Himmler; and that the only reason why Keitel insisted that discussions with the Protecting Power should be carried out with the Wehrmacht was because of his fear that those powers would not deal or negotiate with Himmler. The witness states that Berger had charge of all camps and asserts that the defendant had complete authority to issue orders and inflict punishments.

Berger stands in a very different position than the defendants Steengracht von Moyland and Ritter. He was chief of Prisoner-of-War Affairs. His jurisdiction over them was complete, and his responsibility toward them clear and unequivocal. He excuses himself by saying that the Koenigstein camp was not under his

jurisdiction, but that of the Wehrmacht, and that therefore he is not responsible for what happened.

In view of the clear and unequivocal testimony of General Westhoff, who was in a position to know the facts, we do not accept Berger's story. But even if what he claims is true, his responsibility remains the same.

General Mesny was taken from that camp to be transported to another camp, and it is not claimed that from the time he left Koenigstein he was under any jurisdiction other than that of the chief of Prisoner-of-War Affairs. The transport column was in command of one of his own officers, and another of his officers was likewise present. His chief of staff was not only aware of what was planned, but he participated in it and the conferences regarding it. He consented to and approved of Meurer's furnishing Mesny's name to take the place of that of General de Boisse. He was informed by Meurer of the reason for the change. It clearly appears that, notwithstanding his alleged refusal to permit his department to have anything to do with the matter, that he did so, and he or his chief of staff attended the conferences between Kaltenbrunner's offices and the Foreign Office regarding same.

We do not credit his statement that he did not know of Kaltenbrunner's report or did not know what proposals were made, for on 16 December Kaltenbrunner reported to Wagner of Inland II that the report had already been signed by the chief of the Prisoner-of-War Affairs, and was then on Kaltenbrunner's desk awaiting his signature.

On 30 December Kaltenbrunner states (*NG–037, Pros. Ex. 1249*):

> "The discussions about the matter in question with the chief of the Prisoner-of-War Affairs and the Foreign Office have taken place as ordered, and have led to the following proposals * * *", being those which we have heretofore discussed.
>
> "In the meantime, it has been learned that the name of the man in question has been mentioned in the course of various long distance calls between the Fuehrer headquarters and the chief of Prisoner-of-War Affairs, and therefore the Chief of Prisoner-of-War Affairs now proposes the use of another man with the same qualifications. I agreed with this and proposed that the choice be left to the chief of Prisoner-of-War Affairs."

There was no reason why Kaltenbrunner should make this up out of whole cloth. He did not thereby himself avoid any responsibility, inasmuch as he baldly describes the plan, the alternative murder methods which could be adopted, the fact that men

under his own command would commit the murder, that he agreed with Berger's suggestion that a substitute be made for the victim first proposed. No one suggests that Kaltenbrunner was thin-skinned or unduly sensitive about taking human life, and he could gain nothing by inserting a gratuitously false statement in his report.

But even if we were inclined to believe that Berger protested and attempted to obtain a rescission of the order, the fact is that his own testimony does not absolve him. When he learned early in January that the murder was to be carried out, his own instructions to Meurer were "to look very keenly and let me know." In order that no question of inaccuracy of translation can arise, we have had the sound track rerun and his exact language transcribed, and the translation thereof checked by two of the official interpreters. The transcript is accurate.

Conceding that Berger gave Meurer these instructions, and this, by the way, Meurer did not confirm, they are a far cry from refusing to carry out the measures proposed, or from ordering Meurer to refrain from carrying them out. Berger himself pictures Meurer as one by nature and training an automaton, and had Meurer received any orders from him, either not to permit or cooperate in this nefarious scheme, there can be no question that the latter would have unhesitatingly obeyed, particularly in view of the fact that his chief, Berger, was no underling, but a lieutenant general in the Waffen SS, whose authority over prisoners of war exceeded that of Keitel himself; that the actual carrying out of this callous murder was one in which Berger's agency took an active part is evidenced by the fact that it was his office which reported the matter to General Westhoff, saying that Mesny had been killed "while attempting to escape."

The fact that Mesny was not chosen until after 30 December 1944 and that this proposal came from the chief of Prisoner-of-War Affairs is shown from Kaltenbrunner's report, and disposes of the claim made by Berger and Meurer that it was not until some 10 days later that they learned that the project had been revived.

If Berger had any qualms about this matter he stifled them, and not only permitted but actively engaged in the commission of this crime. We find him guilty.

RITTER

We think the official correspondence to a large measure substantiates Ritter's defense that his only function in this affair was to transmit von Ribbentrop's instructions to Wagner to see

that nothing happened in the matter before Himmler and the SS and the SD had agreed with Wagner about the "modalities," and possible later manner of reporting the affairs, and that when Wagner tried to involve Ritter in it as being the responsible Foreign Office official conducting it, he refused to permit himself to be so involved. The fact remains that when he learned that Kaltenbrunner's office insisted that Hitler had withdrawn his order at a time when Jodl had just informed Ritter of the opposite, he insisted that Wagner not rely on Kaltenbrunner's assurances.

We think that Ritter so insisted because of the nature of von Ribbentrop's instructions which he had passed on to Wagner. Ritter insists that he protested to Steengracht von Moyland against this matter as being in violation of international law, and finally received Steengracht von Moyland's assurances that von Ribbentrop had given his word of honor that this miserable murder would not take place. We believe that Ritter tells the truth.

Under the circumstances we do not see that there was anything more he could have done. He had no access to or influence over Hitler. He had the right to rely on what Steengracht von Moyland told him. He neither originated the plan nor implemented it.

STEENGRACHT VON MOYLAND

The defendant Steengracht von Moyland had and took no part in this matter, other than in a few and possibly one or two instances, being the channel through which some of the documents flowed. The very important Kaltenbrunner report to Himmler of 30 December did not pass through his hands.

He testified that when he learned of the plan to murder General Mesny he first talked to von Ribbentrop over the telephone, and later called upon him and protested violently against it, and finally convinced von Ribbentrop that it was not only unlawful but an act of folly, and obtained von Ribbentrop's promise that he would take the matter up with Hitler and procure a rescission of the order. We believe him, and here again we cannot see that there was any further course of action which was open to him. In fact, a careful review of the documents and other evidence shows that the only persons in the Foreign Office, other than von Ribbentrop himself, who did other than attempt to delay the matter, were Wagner and perhaps von Thadden.

We find Steengracht von Moyland and Ritter not guilty in the matter of the Mesny murder.

Sagan murders.—The International Military Tribunal found:*

* Trial of the Major War Criminals, op. cit. supra, volume I, page 229.

"In March 1944 fifty officers of the British Royal Air Force who escaped from the camp at Sagan where they were confined as prisoners, were shot on recapture on direct orders of Hitler. Their bodies were immediately cremated, and the urns containing their ashes were returned to the camp. It is not contended by the defendants that this was other than plain murder, in complete violation of international law."

Switzerland, the Protective Power, on 26 May 1944, made inquiry of the German Foreign Office in regard to the escape of these British officers from Stalag Luft III. On 6 June the defendant Steengracht von Moyland, for the Foreign Office, answered that a prelimanary note was submitted to the Swiss Legation on 17 April concerning the escape which took place on 25 March, stating that according to the investigation nineteen of the eighty prisoners of war who had escaped were taken back to the camp; that the hunt still continued and investigations had not been concluded; that there were preliminary reports that thirty-seven British prisoners of war were shot down when they were brought to bay by the pursuing detachment and when they offered resistance or attempted escape anew after recapture; and thirteen other prisoners of war of non-British nationality were shot after having escaped from the same camp; that the Foreign Office reserved the right to make a definite detailed statement after the conclusion of the investigation, and as soon as details were known, but that the following could be said: that mass escapes of prisoners of war occurred in March, amounting to several thousands; that they in part were systematically prepared by the general staffs in conjunction with agents abroad and pursued political and military aims; were an attack on the public security of Germany; were intended to paralyze its administration, and in order to nip in the bud such ventures, especially severe orders were issued to the pursuit detachments not only for recapture but also for protection of the detachments themselves; and accordingly, pursuit detachments launched a relentless pursuit of escaped prisoners of war who disregarded a challenge while in flight or offered resistance, or attempted to re-escape after having been captured, and made use of their arms until the fugitives were deprived of the possibility of resistance or further flight; that arms had to be used against some prisoners of war, including the fifty prisoners of war from Stalag Luft III; that the ashes of twenty-nine British prisoners of war have been brought to the camp so far.

Apparently on 23 June the British Foreign Secretary made a declaration with respect to these murders. On 26 June the Swiss

again made inquiry of the Foreign Office and received a reply dated 21 July that Germany emphatically rejected the British Foreign Secretary's declaration; that because of alleged bombings of civilian population and other alleged acts, Great Britain must be denied the moral right to take a stand in the matter of the escapees or to raise complaints against others, and the German Government declined to make further communications in the matter.

On 25 May Vogel on instructions from Ritter informed Legation Councillor Sethe that the Foreign Office had not yet received a copy of the communication of the OKW dated 29 April. On 4 June, Ritter informed the Foreign Office that the day before Keitel had agreed to the draft of the note to the Swiss Legation regarding British prisoners of war, and inquired why the Foreign Office wanted to inform the Protective Power of the funeral beforehand, as this information had not been requested. He also discussed the chaining of British officers who were being transported from one prison camp to another.

On 22 June von Thadden submitted a memorandum to the chief of Inland II that Anthony Eden had made a statement in the House of Commons that a decision would be made with respect to the shooting of British prisoners who escaped from prison camps, and that Albrecht, chief of the Foreign Office legal division, had advised him that the British had been informed via Switzerland that it had been found necessary to shoot several British and other officers in the course of such activities because of refusal to submit to orders when captured; that nineteen other officers who did not offer resistance were taken back to the camp, and that further details of the fifty cases of prisoners being shot would be submitted to the British.

On 17 July Brenner of the Foreign Office informed Ritter that Hitler agreed to the note to the Swiss delegation regarding the escapes from Stalag Luft III, and approved the drafting of a warning against attempts to escape and the publication of Germany's note to the Swiss Legation, and that this warning should be made public; that von Ribbentrop had ordered Ritter to transmit Germany's second reply to the Swiss envoy, and directed Ritter to cooperate with the OKW in composing the warning which was to be posted in the prisoner-of-war camps and to submit the same to von Ribbentrop for approval; that the warning could perhaps state that there were certain death zones where very special weapons were tested, and any person found in one of these zones would be shot on sight, and, as there are numerous such zones in Germany, escaping prisoners would expose themselves not only to the danger of being mistaken for spies, but of unwittingly entering one of the zones and being shot.

Dr. Erich Albrecht, Ministerialdirigent in the Foreign Office, and head of its legal department, gave an affidavit relating to this matter, viz, deposing that around 25 May 1944 at von Ribbentrop's order he went to Salzburg and discussed the Sagan murders with von Ribbentrop and Ritter, at the conclusion of which he and Ritter were instructed to draft a reply note to the Swiss delegation on the basis of the material which had been made available by the RSHA; that later two officials of the criminal police appeared and submitted photostatic copies of teletype messages and reports from various police offices throughout Germany reporting that individuals or groups of prisoners of war from the Sagan camp had been shot while resisting recapture, or in renewed attempts to escape.

It was apparent to both Ritter and Albrecht that these teletype reports were fictitious—a fact which the police officials did not seriously dispute. Thereupon, according to Albrecht, after conference with Ritter he drafted a reply on the basis of this fictitious and false information, and Ritter submitted it to von Ribbentrop with the urgent advice, in which Albrecht concurred, that it be not sent.

Ritter confirmed this affidavit of Albrecht except to deny that he had anything to do with drafting or submitting the reply. However, Albrecht is Ritter's witness, for whom he vouches. Doubtless the affidavit was not prepared without thought or without conference with Ritter or his counsel before it was submitted to the Court, and the presence of this statement in the affidavit must represent Albrecht's recollection of the incident concerning the interview with the police officers and the conclusion that they had presented false reports, von Ribbentrop's instructions, and the action which Ritter took with respect thereto. The drafting of the reply and the conference with von Ribbentrop were important and dramatic incidents which would necessarily impress themselves upon one's memory, unless the Tribunal is to assume that the murder of prisoners of war was so commonplace an incident in the lives of both Albrecht and Ritter that no particular attention was paid to a single occurrence. This we do not believe to be the fact, and we accept and find the fact to be as the Albrecht affidavit deposes, viz, that after discussion with Ritter he composed the reply note, and they jointly submitted it to von Ribbentrop.

While it may be true that at an early stage Keitel had given orders not to inform the Foreign Office of the Sagan murders, and that the OKW's "provisional communication" of 29 April 1944 was not contemporaneously delivered to the Foreign Office, the fact remains that by 25 May 1944 Legation Councillor Sethe had

examined and made a copy of it in the office of the High Command, so that when the note was drafted Ritter had full knowledge of the fact that escaped prisoners of war had been deliberately murdered by officers of the German Reich, in clear violation of international law and of the Geneva Convention.

Ritter joins in with Steengracht von Moyland in his statement that no answer was made to the Swiss Government. This is not the fact. It clearly appears that not one but two answers were made to the Swiss, and that the first (6 June 1944) at least was delivered to the Swiss Minister in Berlin by Steengracht von Moyland himself. It was this note which Albrecht drafted and Ritter presented to von Ribbentrop.

Ritter further claims that he had no recollection of taking part in drafting and never saw the warning against the consequences of escape and the description of the so-called "death zone" where every unauthorized person would be shot on sight, which was to be posted in prisoner-of-war camps. This testimony of Ritter is obviously untrue.

Brenner's memorandum of 17 July relates to the second note and the warning, and states that Ritter had been directed by von Ribbentrop to cooperate with the OKW in composing the warning, and to submit it to the Foreign Minister for approval, and had made suggestions with respect to the wording of the "death zone" clause. It bears the notation, "Submitted, Ambassador Ritter."

On 5 August 1944 Ritter wrote to Albrecht that the "enclosed version of a warning has now been approved by the Reich Minister for Foreign Affairs and the OKW;" that the OKW was then engaged in translating it, and when completed it would be given to the prisoner-of-war sections of the OKW for distribution to the camps; that "the Foreign Office has not yet communicated the warning to the Swiss Government, which must coincide with the time of the posting of the warning in the camps; the draft of the note to the Swiss was to be submitted to Ribbentrop for approval in advance, so that it could be dispatched as soon as possible after the warning has been posted."

On 21 July 1944 the Foreign Office delivered to the Swiss Government a second note stating that the Foreign Office refused to further communicate about the matter on the pretense of Eden's speech of 23 June in the House of Commons. This was an infantile proceeding which, of course, deceived no one.

It does not appear, however, that the proposed note mentioned in Ritter's memo to Albrecht of 5 August was ever sent, and there is no evidence that the warnings were ever posted. It is a fair inference that the German Government concluded that its

ostrich-like note of 21 July had enabled it to withdraw with what it hoped to be some shreds of dignity, from an unspeakable situation which it could not maintain, and which it could not afford to have bared to the civilized world; and therefore, the proposed note was not sent, the warnings remained unposted, and a veil was dropped over the whole matter.

While Steengracht von Moyland was not as close to the situation as Ritter, nevertheless it was he who, as the responsible leading official of the Foreign Office, second only to von Ribbentrop, delivered at least the first note to the Swiss delegation.

It is altogether likely that he delivered the second message, inasmuch as that was one of his admitted official functions. He testified he had had no "clear recollection" of the Foreign Office directors' meeting of 22 June 1944 at which was discussed both Eden's speech and Albrecht's statement that the British had been informed, through Switzerland, that several escaped British and other fliers had been shot, and that further details respecting the fifty cases of shooting would be submitted to the British.

We note that the phrase "clear recollection" is used both in the question propounded by Steengracht von Moyland's counsel and in his answer. We believe that this indefinite phrase was used advisedly for the purpose of avoiding discussion of details, and that Steengracht von Moyland, while perhaps not having a mirror-like recollection, in fact remembered it in substantial detail.

In discussing Reinhardt's statement that "such occurrences as in camp Sagan in which fifty officers were shot after having made an attempt to escape are extremely regrettable," Steengracht von Moyland said: "We all regretted this extremely, and it was a terrible crime."

In a matter as important as this, involving the inevitable repercussions in neutral as well as enemy nations, it is unbelievable that a state secretary would deliver a note so patently lame without making some inquiry about the matter, and it is extremely unlikely that Albrecht or Ritter would not have informed him not only that the justifications for the shooting were fictitious, but their misgivings about the terms of the note as well.

A man of ordinary intelligence would recognize that this was an attempt to cover up an incident which could not bear the light of day. We are convinced that Steengracht von Moyland delivered the note of 6 June 1944 to the Swiss Government, and that he was informed of the actual facts.

The murder of these unfortunate escapees was due to one of the savage outbursts of Hitler. That it was a crime of insensate horror and brutality, then not a novelty in the operations of the

Nazi government, and that it violated every principle of the Geneva Convention, is unquestioned. No defendant does other than condemn it, and each disclaims any guilty connection with it.

Steengracht von Moyland had no part in either the issuance of the order or its execution. The murders were long-accomplished facts before he knew of them.

However, under the Geneva Convention and Hague Regulation (Art. 77, Geneva Convention [Prisoners of War], 1929, and Art. 14, Hague Regulation [Annex to Convention No. IV, Laws and Customs of War on Land], 1907), Germany was under the duty of truthfully reporting to the Protecting Power, the facts surrounding the treatment of prisoners of war, and of the circumstances relating to the deaths of such prisoners. To make a false report was a breach of its international agreement, and a breach of international law. The detaining powers' duty to report the facts was intended to prevent the very kind of savagery upon helpless prisoners which took place in the Sagan incident.

If a belligerent can starve, mistreat, or murder its prisoners of war in secret, or if it can, with impunity, give false information to the Protecting Power, the restraining influence which Protecting Powers can exercise in the interests of helpless unfortunates would be wholly eliminated. Thus, the duty to give honest and truthful reports in answer to inquiries such as were addressed by the Swiss Government is implicit.

The false reports which Ritter helped draft and which Steengracht von Moyland transmitted, stupid and inept as they were, were intended and calculated to deceive both the Protecting Power and Great Britain, and at least give a color of legality to what was beyond the pale of international law.

The inquiries from the Protecting Power regarding the treatment of and fate of prisoners of war, addressed to the German Government both by necessity and by diplomatic usage, were addressed to the Foreign Office. The reply of the German Government to the Protecting Power of necessity and by diplomatic usage came from the Foreign Office.

Steengracht von Moyland and Ritter must each be held guilty of the crime set forth in paragraph 28c of count three of the indictment.

Allied commando murders.—The record fails to disclose that Steengracht von Moyland had either knowledge, part, or complicity in these murders other than possibly to receive and possibly to transmit to the Protecting Power of Switzerland the answering note already discussed with respect to the defendant Ritter. Steengracht von Moyland testified that he did not see the teletype in question or have anything to do with its transmission

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to the Swiss Legation. This was not an unimportant matter. It involved an official communication to a Protecting Power of at least a prospective clear violation of international law, and it would be strange if it had not been brought to the attention of the State Secretary.

But even if we felt impelled to reject his testimony, our conclusions with respect to his guilt would be the same. Steengracht von Moyland did not originate the Commando Order; he had nothing to do with the murders committed pursuant to it. There is no evidence indicating that he had earlier knowledge of their commission; he was not a party to nor did he have knowledge of either Ritter's or von Ribbentrop's activities concerning the formulation or drafting, or of the conference between Ritter and the Wehrmacht or von Ribbentrop and Hitler. He merely received his orders from von Ribbentrop through Ritter to transmit to the Swiss delegation a verbal note already prepared by others, stating the German Government's position and proposed action with respect to members of Allied commandos found within German lines under certain specified conditions. The note states no facts or does not refer to the Egersund incident.

Steengracht von Moyland should be and is acquitted of complicity in the crimes charged in paragraph 28b of count three.

LAMMERS

On 4 June 1944 the defendant Lammers, as Reich Minister and Chief of the Reich Chancellery, transmitted to the Minister of Justice, Thierack, a Bormann secret circular of 30 May, stating that no police measures or criminal proceedings were invoked against German civilians who participated in lynching of American and English aircraft crews who had bailed out.

Lammers informed Thierack that Himmler had given these instructions to his police leaders and asked Thierack to consider, "how far you want to instruct the courts and district attorneys with it." There is no substantial difference between [057–PS, Prosecution] Exhibit 1230 and [636–PS], Lammers Exhibit 55.

Lammers asserts that he thought that Bormann's circular dealt only with past events, and that he called the matter to the attention of the Minister of Justice in order to engage his interest and thus prevent further lynchings which might arise because of lack of prosecution, and left it to the discretion of the Minister as to what should be done.

While admitting that lynch law may not be tolerated by a civilized state, the defendant insists that in time of emergency, because of the indignation and consternation of the civilian population, official means failed and that the government had no reason

and no right to sacrifice its own public executive officers in order to protect the lives of murderers. He insists that he transmitted this circular to Thierack on Hitler's orders.

We do not believe and do not accept either the explanation or the justification or excuse. If the defendant referred only to past events his letter would have no significance, because from Bormann's circular it is apparent that no proceedings had been taken, and therefore there was no reason to inform Thierack. That Thierack did not so regard Lammers' communication is apparent from his handwritten note thereon, that "such cases are to be submitted to me when they arise" for examination of the question of quashing.

We find that Lammers wrote Thierack in order to advise him of the policy which had been adopted, to assure him that it was officially authorized, and that he might accordingly conduct the policy of his department in the future.

Lammers was not a mere postman, but acted freely and without objection as a responsible Reich Minister carrying out the functions of his office. We find that Lammers knew of the policy, approved of it, and took an active, consenting, and implementing part in its execution. We find him guilty on count three in connection with this incident.

VON WEIZSAECKER AND WOERMANN

On 4 May 1940, von Weizsaecker received notice from Keitel informing him of the report from the commander of Norway that German forces had encountered many troop contingents consisting of Norwegians, Finns, Danes, and Swedes which had crossed the Swedish border on 1 May and were armed with heavy and light machine guns, and that by the Fuehrer's orders it was intended to treat non-Norwegians found in such units as guerrilla fighters and shoot them according to martial law; that the Swedish Government was to be informed of this intention, as manifestly this is a direct support of German enemies.

Keitel further mentioned certain Norwegians who had already been pushed back across the Swedish borders and later returned to Norway. Von Weizsaecker directed Woermann to wire instructions to Stockholm, Copenhagen, and Helsinki.

Von Weizsaecker attempts to defend these measures as justified by international law in that certain groups had abused the neutral borders of Sweden by crossing back and forth whenever they desired to indulge in hostilities.

In his brief he relies upon the provisions of Article 2 of the Hague Convention [No. V] of 1907 respecting the rights and duties of neutral powers and persons in case of war on land, which is to the effect that:

"Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral power."

This, however, constitutes no defense or justification for the murder of soldiers of a belligerent, whether they be of its own nationality or are volunteers from another country, or for depriving them of the status of prisoners of war and the protection afforded by the Geneva Convention.

It was the duty of Sweden to protect its neutrality, but it could not be compelled to perform that duty under German threat to murder prisoners of war who had crossed the Swedish borders into Norway.

Article 17 of the same Convention contains two pertinent provisions. First, that a neutral cannot avail himself of his neutrality if he commits hostile acts against a belligerent, particularly if he voluntarily enlists in the ranks of the armed forces of one of the parties; and second, that the neutral who thus loses that status in so doing does not forfeit the right to be treated as a lawful belligerent. If captured, he is entitled to be treated as a prisoner of war.

The article continues:

"In such a case the neutral shall not be more severely treated by the belligerent against whom he has abandoned his neutrality than a national of the other belligerent state could be for the same act."

The assertion of the defense that Germany had the right to assume that the Norwegian Government, an occupied country, had not violated its obligations toward the friendly neutral Swedish Government, and therefore that these bands, regardless of whether or not they were composed of Norwegians or non-Norwegians, did not belong to the regular Norwegian Army is wholly gratuitous and without substance.

Neither Hitler, Keitel, nor apparently von Weizsaecker were at all concerned with this phase of the matter. The real purpose of the measures, as disclosed by the memoranda, was to "make the Swedes more compliant with regard to the question of transit of raw materials."

We do not hold that those engaging in guerrilla warfare are entitled to the protection of the Geneva Convention. It has been decided and we deem properly by Tribunal V in Case 7 (the Hostage case)* that they are not. Nor do we suggest that Germany could not, with entire propriety, call attention to Sweden's

* United States *vs.* Wilhelm List, et al., volume XI, this series.

and Finland's alleged failure to protect their respective neutrality. However the German action here involved was not based on this principle of international law. Neither Hitler, the High Command, nor apparently the Foreign Office were interested in the question as to whether the men were actually guerrillas, but expressed the intention to arbitrarily class non-Norwegians as such without regard to the provisions of the Hague Convention of 1907, Articles 1 and 2. The only claim was that they had been found in armed units which had crossed the Swedish border into Norway.

There was and is no justification or excuse for the action in question, and the measure was clearly a violation of international law and of the Hague and Geneva Conventions.

As ordered by von Weizsaecker, the Foreign Office representatives in Finland and Sweden transmitted the message which von Weizsaecker had directed, and the replies of these governments are found in [Woermann 160], Woermann Exhibit 103, book 5–C.

The note of the Finnish Government merely dealt with the charge that it had failed to fulfill its duties as a neutral, and contains the somewhat sardonic statement that "to judge from the recent events in Norway, no one will have the desire any longer to expose himself [to] risk there."

The first reply note of the Swedish Government merely asserted its intention to investigate and to protect its neutrality. The second communication informed the Foreign Office that its investigation discloses that only ten persons had crossed the Swedish border on 1 March, and that further investigation and report would be made, and *urgently requested that the notified German measures be not carried out for the time being.*

These notes can hardly be said to be a recognition that the German action was in accordance with international law.

In the Woermann brief it is suggested that the non-Norwegians were irregular volunteers, because the German Government had to assume that Sweden had fulfilled its duty as a neutral and had not permitted recruiting within the borders, and therefore, irrespective of whether these men carried weapons, openly wore insignia recognizable from a distance, or otherwise complied with the provisions of Article 1 of the Hague Rules of Land Warfare, they were guerrillas because they were not organized on the soil of Norway.

The Hague Convention imposes no such limitation, nor does it recognize any such exceptions. If a belligerent may grant or refuse prisoner-of-war status to members of enemy forces because in its judgment the prisoner had not been lawfully inducted into

the enemy army, the very purpose of the provisions of the Hague Convention would be defeated.

It is to be remembered in this case that neither Woermann nor von Weizsaecker admits that the proposed action was unlawful, but each attempts to justify and excuse the same.

There is no proof, however, that these threats were actually carried out. Threats to commit unlawful acts do not, *per se,* constitute violations of international law.

Therefore, those actions of von Weizsaecker and Woermann cannot be the basis of a finding of guilt, but they may be considered in determining the weight to be given their protestations of lack of sympathy for and desire to sabotage other unlawful acts of the Nazi regime.

Depriving French prisoners of war of a protecting power.— On 1 November 1940, Ritter transmitted to the Foreign Office a memorandum stating that he had informed General Jodl of Hitler's determination to have the United States removed as the Protecting Power for French prisoners of war. This was initialed by von Weizsaecker.

On 2 Noevmber, Albrecht, Chief of the Foreign Office Legal Department, wired the German embassy at Paris that the Fuehrer had issued instructions that in the future the French were themselves to act as the Protecting Power for French prisoners of war, and directed Abetz to take up discussions with Laval with the following objectives:

(1) That the French take over protection of their own prisoners of war, and

(2) That it explicitly state to the United States that its activities as a Protecting Power were finished, and finally,

(3) That Laval be informed that Scapini would suit Germany as Plenipotentiary for prisoner-of-war matters, and that he be directed to visit Berlin for discussion of details.

This teletype was initialed by Ritter, von Weizsaecker, and Woermann.

On 3 November, Abetz wired the Foreign Office that Laval had been so informed and that the Vichy government was immediately informing the United States that it was no longer recognized as a Protecting Power for French prisoners of war, and further that Scapini had been requested to see Marshal Petain on Tuesday to be officially informed of his intended duties and to prepare for the journey to Berlin. This reply was received by von Weizsaecker.

Woermann asserts that "after direct relations have been taken up between Germany and France, a Protecting Power is no longer needed," and that these matters could be regulated between them

and Scapini. He asserts that Scapini's appointment instead of leading to a deterioration of the conditions of the French prisoners of war, improved it. We greatly doubt that the French action was voluntary. Hitler had decided what they should do. The Foreign Office told Abetz to see that the French complied, and within 24 hours the matter was consummated.

Matters of such importance are not consummated with that degree of speed between foreign powers who are each free to act and consider. However, the prosecution has offered no evidence that by reason of the change the conditions and treatment of the French prisoners of war deteriorated, and in the absence of such proof, this incident cannot form the basis of a finding of guilt.

Murder of captured British soldiers.—On 14 February 1941 the United States as Protecting Power made inquiries as to the circumstances under which six British soldiers were captured and then shot in the forest of Dieppe.

A memo from the office of von Ribbentrop, initialed by von Weizsaecker, directs Legation Councillor Albrecht to ascertain the facts, stating that he was of the opinion that the note should be "rejected in the sharpest terms."

Albrecht made written inquiry of the Wehrmacht prisoner-of-war department. Here the record ends. Whether the Wehrmacht replied, and what response the Foreign Office made to the United States Government, whether the Foreign Office ever even acted on the facts, or rejected the note, are all wholly unknown.

Conviction cannot be based on such a record.

Allied commando murders.—Although the indictment charges von Weizsaecker and Woermann with informing the Protecting Power that members of the Allied commandos murdered after surrender had been killed "in combat," no evidence was offered in support of this specification. At the time each had assumed assignments as Ambassadors abroad.

These defendants should be and are acquitted of complicity in these crimes.

COUNT FIVE—WAR CRIMES AND CRIMES AGAINST HUMANITY; ATROCITIES AND OFFENSES COMMITTED AGAINST CIVILIAN POPULATIONS

The indictment alleges that the defendants von Weizsaecker, Steengracht von Moyland, Keppler, Bohle, Woermann, Ritter, von Erdmannsdorff, Veesenmayer, Lammers, Stuckart, Darré, Meissner, Dietrich, Berger, Schellenberg, Schwerin von Krosigk, Rasche, Kehrl, and Puhl, from March 1938 to May 1945, committed war crimes and crimes against humanity in that they par-

ticipated in atrocities and offenses, including murder, extermination, enslavement, deportation, imprisonment, killing of hostages, torture, persecutions on political, racial, and religious grounds, and other inhumane and criminal acts against German nationals and members of the civilian populations of countries and territories under belligerent occupation of, or otherwise controlled by Germany, and in the plunder of public and private property, wanton destruction of cities, towns, and villages, and devastation not justified by military necessity.

It is alleged that the Third Reich embarked upon a systematic program of genocide aimed at the destruction of nations and ethnic groups within the German sphere of influence in part by murderous extermination and in part by elimination and suppression of national characteristics with intent to strengthen the German nation and the so-called "Aryan" race at the expense of such other nations and groups by imposing Nazi and German characteristics upon individuals selected therefrom, and by the extermination of "undesirable racial elements"; that portions of the civilian populations of occupied countries, especially in Poland and the occupied eastern territories, were compelled by force to evacuate their homesteads which were sequestered and confiscated by the Reich and their properties, real and personal, were treated as revenue of the Reich, and the so-called "ethnic Germans" were resettled in such lands; that German racial registers were established and legislation enacted defining these classes of "ethnic Germans" and other nationals of occupied territories and the puppet and satellite governments eligible for Germanization; that subsequent acquisition, in some instances of German citizenship, was compelled, and individuals who were forced to accept such citizenship or upon whom such citizenship was conferred by decree became amenable to military conscription, service in the armed forces, and other obligations of citizenship; that failure to fulfill these obligations resulted in imprisonment or death, and the forced Germanization constituted the basis for such punishment; that those classes of persons deemed ineligible and those individuals who refused Germanization were deported to forced labor, confined in concentration camps, and in many instances liquidated; that in the occupied territories the use of judicial mechanisms was a powerful weapon for the suppression and extermination of all opponents of the Nazi occupation and for the persecution and extermination of "races"; special police tribunals and other summary courts were created in Germany and in the occupied territories, and subjected civilians of these occupied countries to criminal abuse, and denial of judicial and penal process; that special legislation was enacted providing summary

trial by these special courts and invoking the death penalty or imprisonment in concentration camps for all members of the civilian population of the occupied territories suspected of opposing any of the policies of the German occupation authorities; that persons who committed offenses against the Reich or the German forces in the occupied territories were handed over to the police and taken secretly to Germany for trial and punishment, without notification to their relatives of the disposition of the case; that certain classes of civilians in the occupied territories deemed politically, racially, or religiously undesirable if suspected of having committed a crime were deprived of all legal remedy and turned over to the Gestapo for summary treatment, all for the purpose of creating a reign of judicial terror in the occupied countries in order to suppress all resistance and exterminate undesirable elements; that in the Reich program of "pacification" of the occupied territories through terrorism, the arrest, imprisonment, deportation, and murder of so-called hostages was effected, and Jews, alleged Communists, "asocials," and other innocent members of the civilian population not connected with any acts against the occupying power, were taken as hostages and, without the benefit of investigation or trial, were summarily deported, hanged, or shot; that they were executed or deported at arbitrarily established ratios for attacks by persons unknown on German installations and German personnel in the occupied territories; that through recruitment drives in the occupied territories and puppet and satellite governments, SS units were organized and SS recruits obtained, often by compulsion from among prisoners of war and the nationals of those countries, and assigned to the Waffen SS military divisions, the administration of the SS concentration camp system, and specially constituted penal battalions; that these units engaged in the commission of atrocities and offenses against the civilian populations of occupied and satellite countries; that anti-Jewish activities with each aggression were extended to the incorporated, occupied, or otherwise controlled German-dominated countries; that Austrian, Czechoslovakian, Polish, and other nationals of Jewish extraction were deprived of their civil rights and their property confiscated, tens of thousands thrown into concentration camps and tortured, and many of them murdered; that these measures were followed by barbarous mass killings of people of Jewish extraction and other foreign nationals in the occupied territories in which hundreds of thousands of men, women, and children were exterminated; that the early program for driving out the Jews as pauper *emigrés* was supplanted in 1942 by a program for the evacuation of eleven million European Jews to camps in eastern Europe for

ultimate extermination; that they were to be transported to these areas in huge labor gangs, and there the weak were to be killed immediately, and the able-bodied worked to death, and thus millions of people of Jewish extraction from Austria, Czechoslovakia, Poland, France, Belgium, the Netherlands, Denmark, Norway, Hungary, Bulgaria, Yugoslavia, Rumania, the Baltic states, the Soviet Union, Greece, Italy, and also from Germany were deported to the eastern extermination areas and murdered.

In addition to these general charges, the indictment alleges the commission of certain specific acts connected with the general program which, it is alleged, were committed by various of the defendants as principals, aiders, cooperators, or abettors. These we will deal with later.

Persecution of the Jews.—No chapters in the history of the world are more black and bloodstained than those which portray the fate of the Jews of Germany and of all Europe which came within the sphere of German domination. The story of all dictators is a selection of some nation, some class, some ideology upon whose shoulders all the woes, alleged and real, may be lodged. Invariably those selected are less able to combat the propaganda of hate. Promises of better conditions are never alone sufficient to arouse the masses to the necessary emotional pitch which will make them the willing subjects of the dictator's will. Not only must they become receptive to such ideas and themselves feel the flames of hate toward someone or some class, but the propaganda and incitement must ever blow the flames higher, whiter, and hotter.

It makes little difference whether the subject of mass hate be a political party, race, religion, class, or another nation. The technique is the same, the results are identical, and the hate thus engendered inevitably brings on resistance and in the end ruin upon those who start and participate in it.

Hitler made the Jewish persecution one of the primary subjects of his policy to gain and retain power. As the years went by the more intensely did he and his adherents throw fuel upon the fire. It was never permitted to die down. It infected the high and the low; it made itself felt in the minds and hearts of men who should and did know better. It would, of course, be a mistake to say that every German became a convert to this doctrine. The record is clear that many did not, but unfortunately they were comparatively few and their voices were not heard or heeded. Some who knew better and who were not swept away by propaganda were alive to the possibilities of increasing their own fortunes and enhancing their position by taking advantage of this horrible persecution and calmly and callously gave lip

service to these pogroms and sought to enrich themselves from the misfortunes of its victims.

The persecution of Jews went on steadily from step to step and finally to death in foul form. The Jews of Germany were first deprived of the rights of citizenship. They were then deprived of the right to teach, to practice professions, to obtain education, to engage in business enterprises; they were forbidden to marry except among themselves and those of their own religion; they were subject to arrest and confinement in concentration camps, to beatings, mutilation, and torture; their property was confiscated; they were herded into ghettos; they were forced to emigrate and to buy leave to do so; they were deported to the East, where they were worked to exhaustion and death; they became slave laborers; and finally over six million were murdered.

As country after country fell under German occupation or control, or was forced to do the will of the Third Reich, its Jewish citizens became subject to the same measures of horror. It is a record of shame and degradation to every German and to the German nation. These crimes were planned by Germans, ordered by Germans, committed by Germans under a government which the German people willingly chose and which, to a large degree, they enthusiastically supported—at least as long as it was crowned with success.

The property of which the Third Reich robbed the Jews was used, and was planned to be used, for the purpose of rearmament and aggression. When the rearmament program and the other financial measures had practically bankrupted the Third Reich, the start of a disastrous inflation was in sight, and Goering at a conference stated:

> "Physical tasks. The assignment is to raise the level of armament from a current index of 100 to one of 300.
>
> "This goal is confronted by almost insuperable obstacles because already now there is a scarcity of labor, because factory capacity is fully utilized, because the tasks of last summer exhausted our reserves of foreign currency, and because the financial situation of the Reich is serious and even now shows a deficit. In spite of this, the problem must be solved.
>
> "Finances. Very critical situation of the Reich Exchequer. Relief initially through the billion (milliarde) imposed on Jewry, and through profits accruing to the Reich in the Aryanization of Jewish enterprises."

A mad race ensued in which people of every class of German society joined; farmers, bankers, big and little businessmen eagerly sought to pick up Jewish property at a fraction of its

value. The German people looked on with general complacence upon all of these measures which finally ended in the deportation of the victims and their being herded into the camps of death. There is no excuse or justification for any man who took a conscious or consenting part in the measures which constituted these abominable and atrocious crimes, and it is immaterial whether they originated or executed them, or merely implemented them, justified them to the world, or gave aid and comfort to their perpetrators.

The very immensity of this mass murder staggers the imagination and tends to blunt a realization of its horror. But we can gain some idea of it from the fact that from the one camp of Auschwitz over 33 tons of gold from the teeth of the victims and rings from their fingers were sent to the Reich Bank.

Foreign Office knowledge of the fate of the Jews in the East.—With typical German thoroughness, not only was the campaign of murder and extermination of Jews in Poland and Russia carried on, but detailed reports were made of these horrible measures. The Foreign Office regularly received reports of the Einsatzgruppen operations in the occupied territories. Many of these were initialed by von Weizsaecker and Woermann. They revealed the clearing of entire areas of the Jewish population by mass murder, and the bloody butchery of the helpless and innocent; the shooting of hostages in numbers wholly disproportionate to the alleged offenses against German armed forces; the murder of captured Russian officials and a reign of terrorism carried on with calculated ferocity; all told in the crisp unimaginative language of military reports.

All this is described in detail in the judgment rendered in Case 9*, and it is unnecessary to repeat it again. It suffices to say that many hundreds of thousands of innocent people were murdered without reason or excuse, without trial or opportunity to establish their innocence, and beyond question the Jewish population was the particular object of these murder campaigns.

The prosecution, however, does not contend that the defendants implemented or initiated the crimes committed by the Einsatzgruppen but that they had knowledge of them and they made no objections to their commission. Here the Foreign Office had no jurisdiction or power to intervene. They were in the most part carried on in an area which was still under the jurisdiction of the Wehrmacht. How a decent man could continue to hold office under a regime which carried out planned and wholesale barbarities of this kind is difficult to understand, but there is no evi-

* United States *vs.* Otto Ohlendorf, et al., Einsatzgruppen case, volume IV, this series.

dence of participation on the part of the defendants Woermann and von Weizsaecker.

What is of importance in this case, however, is that the facts disclosed by the records of these crimes disposes of the claim of ignorance of final solution and of the purpose of the deportation of the Jews to the East. Knowing as they did what happened to the Jews when they came under the control of the SS, Gestapo, and police, we find ourselves unable to believe that these defendants had any idea that these deportations ended in anything but the death of these deportees through exhaustion from overwork, starvation, or mistreatment, and by mass murder. The defendants are not men of only ordinary intelligence and understanding. They are educated and trained to official life and experienced in the evaluation of policy, and the motives and acts of parties, officialdom, and of nations, and wholly accustomed to read between the lines of restrained or apparently innocuous language, and from it extract the meaning lying behind the words.

The defendant von Weizsaecker's statement that he thought Auschwitz was merely a camp where laborers were interned, we believe, tells only part of what he knew and what he had good reason to believe. He had access to what was publicly broadcast by the outside world of what was going on there. He was kept informed by his contacts with the Wehrmacht, and the opposition, and with the office of Admiral Canaris, and he knew what happened to the Jews of Poland, of the Baltic states, and of the occupied territories of Russia. Unless he thought that ravening wolves had overnight become meek lambs, he must have realized what the end would be.

It is possible, but we think unlikely, that he was not informed of the exquisite techniques of murder developed in this camp, but that he knew the deported were marked for slave labor and death we have no doubt. This is clearly indicated by the testimony of his own son, Karl von Weizsaecker, and by the testimony of a number of other of his own witnesses, and particularly among those of his Foreign Office associates who, with him, claim that they were members of the underground movement against the Hitler regime. We may mention von Schlabrendorff, Bruns, von Etzdorf, and von Bargen.

Karl von Weizsaecker testified as follows (*Tr. pp. 10028–10030*):

"Q. During the war did you also talk to your father about the deportation of Jews and other atrocities?

"A. Yes, partly we talked about it generally and partly we discussed specific cases.

"Q. Did you and your father know then that the Jews were being killed?

"A. Of course, one knew that. The big difficulty was that it was known that such things were happening but that one did not know where and how it happened.

* * * * * * *

"Q. Did your father never consider helping the Jews by open contradiction, that is, by protesting publicly against Hitler's anti-Semitic policy?

"A. Well, we discussed that, too, and I can tell you exactly what my father's opinion was on that point. He said, 'If one did that, one would become a martyr, but one would certainly not help the Jews by doing it.' "

An example of what happened to the Jews is graphically portrayed in the testimony of Jeanette Wolfe. Her husband was sent to Buchenwald, never again to be heard of. Of her children, the son was shot in the concentration camp Stutthof; her third daughter was sent to Ravensbrueck and vanished; her second daughter has survived, but with shattered health; her adopted daughter, a mere child, was one of a shipment of 2,000 children who in 1943 were loaded in open trucks in weather 40° below zero, never again to be heard of. In Auschwitz her brother, his wife, one daughter, two sons-in-law, and their three children, nine cousins, one uncle, and one aunt, were exterminated. Mrs. Wolfe's husband was first sent to a concentration camp after the Crystal Week pogrom in 1938, and she herself, with 1,350 other Jews from the Dortmund area, was deported to the East in the beginning of 1942, and with Jews from Latvia, Poland, Hungary, Czechoslovakia, and Byelo-Russia, was sent to a concentration camp at Riga. The food there was barely sufficient to maintain life, but not enough to enable the victims to work. If the sufferers became too weak for labor, they were sent away in "Ascension" squads, together with the old and the children. The men were worked to death in the stone quarries; the women were shorn of their hair, which was clipped from their heads and shipped away to be made, allegedly, into ropes.

The witness, Philipp Auerbach, a Jewish-German chemist, fled from Germany to Belgium in 1934, but when that country was overrun, fled to France. On its fall he was captured and sent by the Gestapo to Berlin, thence to various concentration camps, and finally in 1943 to Auschwitz. He testified that it was common knowledge that those who were transported there would be sent to the "ovens." This was known as early as 1941 in Berlin. He did not become a victim because of his chemical knowledge, but was branded with the number 188869 and put to work in the camp combating vermin and delousing the buildings in the camp.

This camp was used largely for foreign Jews, and the Hungarians commenced to arrive toward the end of 1943 and early 1944; of over 50,000 Jews deported from Greece, less than 100 survived; transports came from France, Belgium, Holland, and other countries wherever, to use his own language, the "German boot" was planted; on arrival the question was asked, "Which of you cannot work?"; those who said they could not were immediately thrown like cattle into trucks and hauled away to the gas chambers; that an SS Oberfuehrer took little children and dashed their brains out against the walls of the station. The victims' clothes were sent to the VoMi; the gold fillings in the teeth of the dead were extracted and sent to the Reich Bank; over 33 tons of gold teeth and rings in 4 years; those fit for work were employed as long as they lasted in the Buna works of the I. G. Farben and in the armament works. The workers left the camp at 5:00 in the morning and returned at 6:00 in the evening carrying their dead, who had died of exhaustion or been shot; once every 4 weeks there was a selection among the workers on a purely arbitrary basis and the selectees exterminated; that on arrival at the camp all Jews were compelled to disrobe and, as they passed the guards, were directed to go to the right or to the left; left meant to the ovens, and right meant to the slave-labor camps.

It is unnecessary to go further into detail. It suffices to say that nearly 6,000,000 European Jews were thus exterminated.

We have stated that the Foreign Office played an important part in these horrors. Through it the arrangements were made whereby the Vichy government of France and the governments of Hungary, Slovakia, Bulgaria, Rumania, and Croatia consented to the deportation of Jews in those territories. Consent was not necessary in occupied France, the Low Countries, Poland, the Baltic states, Denmark, and the occupied Russian territories. There the Jews were merely seized and sent to their deaths. But even here the Foreign Office played an essential part. Among its duties was to ignore, or attempt to quiet, or give evasive and often false answers to the protests or inquiries of other powers. All those who implemented, aided, assisted, or consciously participated in these things bear part of the responsibility for the criminal program.

VON WEIZSAECKER, WOERMANN, AND STEENGRACHT VON MOYLAND

The defendant Ernst von Weizsaecker, after service in the German Navy, entered the Foreign Office in 1920, and was thereafter transferred to the Consulate at Basel, Switzerland, and there-

after to the German Legation at Copenhagen where he served until 1927 when he was transferred to Berlin as Senior Legation Councillor, and remained there until the summer of 1931. He was then appointed Minister to Norway and remained there until the summer of 1933 when he was appointed Minister to Switzerland, which post he held until the spring of 1937. From May 1937 until March 1938 he was director of the Political Division of the Foreign Office, and in April of that year was appointed State Secretary, which post he held until approximately 1 May 1943 when he was appointed Ambassador to the Vatican, where he served until the collapse.

The defendant Ernst Woermann entered the Foreign Office in 1919, served as Secretary of Legation at the German Embassy in Paris from 1920 to 1923, was Councillor of Legation at Vienna from 1925 to 1929, was called back to the Foreign Office as Councillor of Legation First Class, and served as head of the International Law Division of the Legal Department until 1936 when he became head of the European section in the Political Department. He served there until he was appointed Councillor of Embassy—Minister First Class—in London where he served until 1938 when von Ribbentrop appointed him Ministerial Director with the title of Under Secretary of State and head of the Political Department. He served in that capacity until 1943 when he was named Ambassador in Nanking, China.

The defendant Gustav Adolf Steengracht von Moyland in 1936 was appointed Agricultural Attache with the German Embassy in London under von Ribbentrop who was then Ambassador. In September 1938 he was transferred to Berlin and appointed Legation Secretary and promoted to Legation Councillor in April 1939. In the middle of May 1940 von Ribbentrop entrusted him with the technical direction of his local headquarters, and he thus became a member of the Foreign Minister's personal staff. In 1941 he became von Ribbentrop's chief adjutant and served in that capacity until May 1943 when he was appointed State Secretary.

We now proceed to analyze the evidence in this case to determine what part, if any at all, the defendants von Weizsaecker, Woermann, and Steengracht von Moyland had in this program.

That the Foreign Office had an interest in this program of liquidating the Jews of Europe is conclusively shown by the documentary evidence. That von Ribbentrop, Luther (Under Secretary of State in charge of Department Deutschland), Abetz (German Ambassador to Paris), Rademacher (of Luther's department), and Wagner (of Inland II of the Foreign Office), as well as divers German diplomatic representatives, particularly in the

satellite states, were deeply involved, is likewise clear. This is particularly true with respect to Luther and Rademacher.

It is insisted, on behalf of von Weizsaecker, that although Luther was normally subordinated to the State Secretary and in many activities should have been subordinated or at least have obtained the approval of the Under Secretary of State in charge of the Political Division, he was in fact a creature of von Ribbentrop's, and acted under his direct instructions, bypassing his nominal superiors in many important matters; and these defendants were, in many instances, kept in ignorance of the proposed action and either never learned of them or only after they had been completed. Von Ribbentrop and Luther are dead, and Rademacher was not called as a witness, either by the defense or the prosecution, which is quite understandable as his position was such that he could not testify without incriminating himself, and if called by the defense his natural tendency to avoid responsibility and cast it upon others—a tendency which the Tribunal has noted in many instances of this case—may well have impelled the defense to refrain from calling him.

The Tribunal is compelled, therefore, to unravel this tangled skein without the testimony of some of the principal actors. We are not unmindful of the temptation to a defendant to evade responsibility, place it on others, and deny his own knowledge and participation. There has been a notable reluctance to testify about, and a lack of memory on the part of the defendants, with regard to matters which we find difficult to believe could have left no impression on their minds or memories, and an insistence that they could not testify unless the prosecution faced them with documents concerning the matter in question. Such a disposition deprives their testimony of much of its weight and we are therefore obliged to approach with caution denials of knowledge of matters which, in the ordinary course of business, should and would have come to their attention.

In October and November 1938 the British and American Ambassadors approached the defendants von Weizsaecker and Woermann, asking that Rublee, the American Chairman of the International Relief Committee, be permitted to travel to Berlin to confer on plans for the emigration of refugees from Germany. Von Weizsaecker was directed by von Ribbentrop on 21 October not to answer the British inquiries; but he had already informed the British Embassy on 18 October that in his opinion the plan was futile; that it was by no means clear which countries were prepared to accept the Jews and the committee's efforts had proved to be sterile, and his belief that it was its intention to prove its worth by entering into discussions with Germany which

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would result in the establishment of the fact that Germany, for obvious reasons, was unwilling to provide Jews with foreign currency, and thus the ultimate object would be reached, namely, to prove that it was again the German obstinacy which was responsible for the misery of the Jews; that merely for the act of making Germany the scapegoat he was unable to recommend Rublee's plan, but that he would pass the memorandum on to the competent office. In this memorandum he states that his answer to the American Ambassador was more placatory, but of the same tenor.

As stated, he was directed by von Ribbentrop to make no reply to the British memorandum. The British and Americans from time to time attempted to renew the matter, but von Weizsaecker and Woermann put them off with vague promises. The defendants claim that finally through their exclusive efforts, Rublee was permitted to visit Berlin and engaged in various conferences.

There can be no question whatsoever that here neither von Weizsaecker nor Woermann was in a position to control the matter. Their superior had given express orders as to the nature of the conversation they might conduct with the foreign representatives in question. They derived their powers only from and through him, and they merely repeated his decision. They did not execute or implement a policy of wrongdoing.

Wannsee conference and the part played by the Foreign Office. —The mass deportation of Jews to the East which resulted in the extermination of many millions of them found its expression in the celebrated Wannsee conference of 20 January 1942. The Foreign Office played an important part in these negotiations and in the actions thereafter taken to implement and assist the program. Von Weizsaecker or Woermann neither originated it, gave it enthusiastic support, nor in their hearts approved of it. The question is whether they knew of the program and whether in any substantial manner they aided, abetted, or implemented it. That both von Ribbentrop and Luther did, there can be no possible question.

On 8 December 1941 a memorandum was prepared by Luther's department "Deutschland" in preparation for a conference with Heydrich to set up the wishes and ideas of the Foreign Office concerning the "total solution" of the Jewish question in Europe. The document does not show on its face that it was submitted to von Weizsaecker or Woermann, and ordinarily this would indicate that it was not.

But on 4 December 1941 Luther prepared a memorandum which was submitted to von Weizsaecker and initialed by him regarding a proposal or suggestion made by Foreign Minister Popoff of

Bulgaria, on or about 26 November of that year, regarding Bulgaria's attitude toward deportation of Bulgarian Jews, in which he suggested that the opportunity rendered by the war must be utilized to settle finally the Jewish question in Europe, and that the most practicable method would be that all European states introduce German legislation on Jews and agree that Jews, regardless of their nationality, should be subject to the measures taken by the country of residence, while their property would be at the "disposal" of the final solution; that a halfway consistent enactment of the German laws for Jews in European countries would break the back of all elements hostile to Germany, and particularly in Hungary; that whether the political situation, in view of the inner resistance of Hungary, Italy, and Spain, was already ripe for such a solution could not be judged from the viewpoint of Department Deutschland, and suggested that an agreement be reached between European powers allied by the Anti-Comintern Pact that Jews of the nationality of these countries are to fall under Jewish measures of the country of their residence, and that Jews of Norway, Luxembourg, Serbian, and Russian nationality, including those of the former Baltic states, would automatically fall under the settlement.

Von Weizsaecker considered the matter very urgent and according to his own testimony likewise submitted it to the legal division for opinion.

On 23 December 1941 Albrecht of the legal division (which was indubitably subordinate to von Weizsaecker) submitted a memorandum which bears the legend, "submitted to the State Secretary," and which refers to some of the issues raised by the Luther memorandum just mentioned. It is to be remembered that the Wannsee conference took place on 20 January 1942. The legal opinion expressed two possibilities—

(1) That the states which pursued Jewish policies similar to those of Germany agree on new bilateral treaties not to use the rights ensuing from the existing trade and residence treaties for the benefit of their Jewish citizens.

(2) That the states in question also arrange a collective treaty, providing that their Jewish citizens in the territory of the other parties should be subject to their legislation on Jews without regard to existing regulations and treaties, but concluded that the suggestion of Department Deutschland to propose a collective treaty between the signatories of the Anti-Comintern Pact might meet with the obstacle that Italy, Spain, and Hungary would not agree at that time to be tied down by such an approach to the Jewish question, and therefore that the collective treaty must, for the time being, be confined to the smaller circle of such states as Slovakia, Rumania, Bulgaria, and possibly Croatia.

The opinion emphasizes the fact that a collective treaty confining these states would not be an easy matter to accomplish, largely because of difficulties which had arisen primarily from economic conditions, and because the extent of the assets of Jewish citizens of the individual potential parties to the collective treaty existing in the territories of other treaty partners was bound to be quite different, and the potential partners would fear to suffer loss by denouncing protection of the assets of their Jewish citizens because it might not be balanced by the assets of Jewish citizens residing in their own territories. Because of these difficulties the legal department thought that the question could be better solved by bilateral treaties. It is to be observed that this solution of bilateral treaties of agreement was the one which was actually employed.

The defendant von Weizsaecker suggests that the legal department, presumably at his insistence, sought to delay these deportations. If so, it was not only inept but its opinion is couched in language which is hardly reconcilable to the objectives sought. When one who seeks to kill a project gives one solution which it states is presently impractical, and recommends another solution having the same end and that solution is the one accepted, it is difficult to see how such a technique is one of sabotage or delay. It is true that the opinion warns against German action or that of satellite countries against Jews who are citizens of countries not parties to the agreement; nevertheless the only effect of this warning was to avoid foreign political difficulties which were patently inherent.

It is not without interest to note Luther's draft of the ideas and wishes of the Foreign Office, dated 8 December 1941. They are—

(1) Deportation to the East of all Jews residing in the Reich, including those living in Croatia, Slovakia, and Rumania.

(2) Deportation of all German Jews living in occupied territories who had lost their citizenship and were then stateless in accordance with the Reich Citizenship Law.

(3) Deportation of all Serbian Jews.

(4) Deportation of the Jews handed over to Germany by the Hungarian Government.

(5) A declaration to the Rumanian, Slovakian, Croatian, Bulgarian, and Hungarian Governments of German readiness to deport to the East Jews living in those countries.

(6) Influencing the Bulgarian and Hungarian Governments to issue laws similar to the Nuernberg Laws.

(7) To exert influence on the remaining European governments to issue laws concerning Jews, and,

(8) The execution of these measures as hitherto in "voluntary cooperation" with the Gestapo.

This program was adopted and the puppet and satellite states, in some instances reluctantly, entered into bilateral agreements permitting Germany to deport their Jewish citizens to the East. The Foreign Office exerted its influence and pressure to achieve these agreements.

On 20 January 1942 the Wannsee Conference on the final solution of the Jewish problem was held and, in addition to Heydrich, the defendant Stuckart, representing the Ministry of Interior, Luther, representing the Foreign Office, and Kritzinger, representing the Reich Chancellery, were present. There also were representatives of the Government General, the Reich Ministry of Justice, Commissioner of the Four Year Plan, and the Ministry for the Occupied Eastern Territories. Heydrich addressed the meeting, reported his appointment by Goering to serve as "Commissioner for the Preparation of the Final Solution of the European Jewish Problem," and stated that the problem of the conference was to clear up the fundamental problems; that the primary responsibility for the administrative handling of the final solution rested in Himmler, the Security Police and the SD, regardless of geographic boundaries. He reviewed the previous steps taken against the Jews and said that the early program had emigration for its object, notwithstanding certain inherent disadvantages such as financial difficulties, lack of shipping space, emigration taxes, limitations of emigration, and the like; that, nevertheless, over 360,000 Jews had thus been eliminated from Germany, and 147,000 from Austria, and 30,000 from the Protectorate of Bohemia and Moravia; that the financing of this emigration was accomplished by requiring Jews or Jewish political organizations to meet the bill and to provide, from abroad, the necessary foreign exchange, and that the "gifts" from foreign Jews up to 30 October 1941 amounted to approximately $9,500,000, but the war had put a stop to this and that the emigration program was to be replaced by the evacuation of the Jews to the East in accordance with Hitler's authorization; that these actions were to be regarded only as a temporary substitute; that in the final solution of the European Jewish problem, approximately 11,000,0000 Jews were involved, of whom only 131,800 were in original Reich territory, 43,700 in Austria, and 74,200 in the Protectorate of Bohemia and Moravia; that under the proper direction the Jews should now be brought to the East in the course of the final solution to be used as labor, and that in utilizing them in big gangs and with separation of the sexes; that a great part would fall out through natural diminution and the

remainder finally able to survice *must be given treatment accordingly because if permitted to go free they would be a germ cell of new Jewish devèlopment;* that it was proposed that the Foreign Office should confer with competent specialists of the Security Police and SD in handling the final solution in the European areas occupied and influenced by Germany; that in Slovakia and Croatia the problem was no longer difficult, and Rumania had likewise appointed a commissioner for Jewish affairs, but, in Hungary it would be necessary, in the near future, to *force* upon that government acceptance of an adviser on Jewish problems. He discussed the question with regard to Italy and France.

Luther said there would be some difficulties in the northern countries and suggested that the evacuation there be postponed for the time being, but that the Foreign Office saw no difficulties for the southeast and west of Europe.

The conference then proceeded to discuss the treatment of Mischlings, that is, persons who were of mixed blood. A first degree Mischling was one who had two Jewish grandparents. A second degree Mischling was one having only one Jewish grandparent. A first degree Mischling was considered a Jew subject to all of the measures enacted by the Third Reich if he belonged to a Jewish religious community then or after the enactment of the Nuernberg Laws, or if he was married to a Jewish person at the time or after the enactment of the laws, or if he was the offspring of a marriage of a Jew after the enactment of those laws, or if he was an offspring of a Jew and born out of wedlock after 31 July 1936. Heydrich stated that a first degree Mischling was to be treated as a Jew, so far as the final solution was concerned, unless he was married to a person of German blood and had issue, or had been excepted, or was accepted by the highest authorities of Party and State. Nevertheless, these first degree Mischlings were to be sterilized (which sterilizations would take place on a voluntary basis) in order to prevent offspring.

A second degree Mischling was to be treated as a person of German blood unless he was a bastard of parents both Mischlings, or if his appearance was unfavorable, that is, looked like a Jew, or if he had a bad police and political record showing that he felt and conducted himself like a Jew.

Hoffmann of the SS expressed the opinion that extensive use must be made of sterilization, *since the Mischling, when confronted with the choice of evacuation or sterilization, would prefer the latter.*

The defendant Stuckart stated that the practical execution discussed for settling mixed marriages and the Mischling prob-

lem would entail an endless administrative task *and recommended that compulsory sterilization be undertaken.*

Buehler of the Government General welcomed the initiation of the final solution for his district because the transport problem played no important part and the Jews had to be removed, and of approximately two and one-half million Jews there *the majority were unfit for work.*

A second conference on the final solution was held on 6 March 1942. This was attended by Rademacher of Department Deutschland of the Foreign Office, and Feldscher of the Ministry of the Interior, and Boley of the Reich Chancellery. Also present were representatives of the Goebbels' Ministry, the Ministry of Justice, Ministry for the Eastern Territories, the Party Chancellery, the Government General, Commissioner for the Four Year Plan, and the Race and Settlement Main Office (RuSHA).

Much of the meeting was taken up with the question of sterilization and the dissolution of mixed marriages. Stuckart's representative, Feldscher, stated that Stuckart's recommendation for sterilization was intended only for first degree Mischlings. It was agreed that sterilization by law expressly or explicitly was untenable, and it was proposed to make legal provisions "to regulate the living conditions of Mischlings, but doubt was expressed as to whether this would suffice as a legal basis.

It was further agreed that even if sterilizations were practicable —which, by reason of the expense, the shortage of doctors and hospital beds seemed impossible—to permit these sterilized Mischlings to remain in the Reich was to raise constant administrative problems and that compulsory sterilizations would not solve the Mischling problem nor bring about administrative relief but rather increase the difficulties, and that should Hitler, nevertheless, for political reasons, consider general compulsory sterilization suitable, first degree Mischlings, even after sterilizations, must be brought in one place in a special city similar to the present treatment of the old Jews today (Theresienstadt).

Following this conference, Rademacher, on 11 June 1942, submitted a resume of the results of the conference of 20 January 1942 and that of 6 March to the defendant von Weizsaecker via Luther, Gaus, and Woermann, evidently transmitting also the letter of Schlegelberger, acting Minister of Justice, who concurred in Stuckart's idea with regard to sterilizations and was against the deportation of half-Jews, and a copy of Stuckart's letter of 16 March 1942 in which he pointed out both political and social objections to deporting half-Jews and again referred to the suggestion he made that Mischlings of the first degree not already sterile be sterilized.

On 21 August 1942 Luther reported to von Ribbentrop giving a review of the anti-Jewish measures and the proposals for final solution. It stated that Hitler intended to evacuate all Jews from Europe and that this intention was known to him as early as August 1940. It continued with the detailed statement of the steps which had been taken in other countries, such as France, Netherlands, and Belgium, the protests made by foreign powers, including the United States, with regard to the measures in France; it mentioned the Wannsee Conference of 20 January 1942 and stated "State Secretary von Weizsaecker had been informed on the conference," but that von Ribbentrop had not because Heydrich had intended to call a later conference which was never held because of his appointment as Reich Protector of Bohemia and Moravia and his later death; that Heydrich had agreed that in all questions concerning questions outside Germany the Foreign Office must be first consulted. It recited the inquiries made of Slovakia, Croatia, and Rumania with regard to their Jewish nationals living in Germany, and that this was done upon agreement with von Weizsaecker, the State Secretary, and Woermann, the Under Secretary of State, before the instructions were dispatched to the German Embassies in those countries. It related the consent given by Rumania, Croatia, and Slovakia, and that the RSHA had been informed that Jewish nationals of those countries could be deported, and that the director of the political division and other divisions in the Foreign Office had cosigned the dispatches; that the Legation at Pressburg had been instructed by the State Secretary von Weizsaecker and Woermann, the Under Secretary of State, to ask the Slovak Government to make 20,000 young, strong, Slovak Jews from Slovakia available for deportation to the East and the favorable results from this request which followed; that thereafter Himmler proposed that the rest of the Slovakian Jews be deported to the East and Slovakia freed of them, and the German Legation was provided with proper instructions, the draft of which was signed by von Weizsaecker and after dispatch was submitted to the von Ribbentrop bureau and to Woermann; that difficulties had arisen because the Slovakian Episcopacy had raised objections, but that Minister President Tuka desired the removals continued and asked for support through diplomatic pressure from the Reich; and the Ambassador had been instructed to state to President Tiso that the exclusion of the 35,000 Jews was a surprise to Germany, and more so since the cooperation of Slovakia up to that time in the Jewish problem had been highly appreciated by Germany; that this instruction had been cosigned by Woermann and von Weizsaecker.

Luther reviews the situation in Croatia and the difficulties had with the Italians over the removal of Croatian Jews in their military area and that von Weizsaecker had ordered the matter held up until inquiry could be made of the Embassy in Rome.

He discusses the suggestion made by Popoff of Bulgaria to von Ribbentrop for the evacuation of Bulgarian Jews and other Jews in Bulgaria, and the fact that von Weizsaecker had asked for the opinion of the legal division with respect to this matter; that the German Legation in Sofia had been instructed that if the question of deportation came from the Bulgarian side as to whether Germany was ready to deport Bulgarian Jews to the East, that it should be answered in the affirmative but as to the time it should be answered evasively; that this was cosigned by von Weizsaecker and Woermann; that the Legation had exchanged notes with the Bulgarian Government and ordered it to be prepared to sign an agreement as to the evacuation. He reviewed the situation in Hungary and stated that the status of Hungarian legislation at that time did not promise a sufficient success. He related the steps which had been taken in Rumania and the difficulties which had arisen there.

Throughout this document he refers to telegrams and communications originating in his department, and we have carefully checked these references to ascertain as far as possible their accuracy. Both Woermann and von Weizsaecker strenuously assert that they never saw this report and that the statements therein contained regarding their cooperation therewith are not true.

In rebuttal the prosecution offered [NG–2586, Prosecution] Exhibit 3601, which is a copy of the report, and has various markings in brown pencil which, according to previous evidence, was the color prescribed by von Ribbentrop to be used by von Weizsaecker. When faced with this the defendant filed a surrebuttal affidavit that this rule did not prevent these various colors being used for other purposes by other people, and he had come across many documents underlined or marked in colors including brown which did not originate with the official to whom the color had been assigned, and states that to the best of his recollection Luther did not bring this exhibit to his attention. His statement regarding the brown pencil is contradicted by the affidavit of Hans Schroeder.

We believe that the defendant is in error in his statement that he never saw this document, and we have been able to trace out many of the documents to which he refers in this exhibit. It is admitted that it was prepared by Luther for the purpose of justifying his activities to von Ribbentrop, and it is unlikely that a

document prepared with such evident care would be submitted, and that references would be made to conferences and agreements with specified persons unless it was substantially accurate. The hazards of making such statements if not true would be such as to make even as reckless a person as Luther hesitate.

Woermann insists that Document 169 [Woermann Exhibit 113], demonstrates that he had no knowledge of the Wannsee Conference. It discloses that on 10 February 1942 Rademacher informed Biefeld of the Political Division that the Madagascar Plan had been abandoned, and that Hitler planned to deport the Jews to the East, whereupon Woermann inquired into the source from which the statement was derived.

On 24 February Rademacher wrote Luther, his chief, requesting him to inform Woermann of the conference had with Heydrich. These documents establish that up to 24 February Woermann had not known, or at least seen, the minutes of the Wannsee Conference, and it is also clear that he was to be informed of it by Luther, and in view of what he himself terms the "importance of the decision," it is highly unlikely that if Luther did not voluntarily give full details he would have taken the necessary steps to ascertain precisely what had taken place. The question involved an entire change of policy and involved foreign political problems of first importance. Woermann had the right to know precisely what was involved and to examine the minutes, and there can be no doubt that von Weizsaecker would have given the necessary order that they be produced had Luther refused to do so. Unless we are to believe that an Under Secretary of State was unable to fulfill intelligently the functions of his office, we must assume that his request for information was complied with and that he actually obtained it. Both von Weizsaecker and Woermann were advised and knew of the slaughter of the Jews by the Einsatzgruppen in Poland, the Baltic states, and in the East, and we do not believe that they thought these Jews had been killed in action in connection with the fighting there, or that several hundred thousand Jews thus murdered were killed by reason of either military operation or because of participation in partisan fighting. No man of even ordinary intelligence could have thought so.

On 7 March 1942 Rademacher wrote a memorandum on the conference of 6 March which, as he states, was to clarify the general directives of the Wannsee Conference of 20 January in which he describes that the proposal to sterilize the 70,000 first degree Mischlings had been found impracticable because of war conditions, and therefore, it had been suggested to postpone this action until after the war, and in the meantime to assemble these

unfortunate people in a single city either in Germany or the Government General, and also that a simplified procedure for the deportation of German Mischlings had been agreed upon. This was submitted to Woermann.

Klingenfuss of the Foreign Office submitted a memorandum of the conference of 27 October 1942 which he had attended, wherein it is said that in view of the experience and knowledge gained in the field of sterilizations and the development of a simpler form and shorter procedure, it is agreed upon that first degree Mischlings should be sterilized on a "voluntary basis" as a prerequisite to their remaining in the Reich: *that they would have the choice of deportation, a severe measure in comparison with sterilization, and for this reason sterilization was to be considered a gracious favor.*

On 31 May 1938 von Weizsaecker wrote the Ministry of Economics. The prosecution insists that von Weizsaecker took part in an attempt to subject Jews of foreign nationality to the effects of the Registration and Utilization Decree of 26 April 1938 and those supplementary thereto. We think the contrary is true. He wrote the Ministry of Economics regarding protests made and to be apprehended from a number of foreign nations, saying (*NG–3802, Pros. Ex. 1757*):

"In the meantime further inquiries here of foreign representatives have confirmed us in the opinion that indiscriminatory implementation of the decree and its provisions in the case of foreign nationals would have serious political consequences disproportionate to any advantages gained, especially if Jewish property subject to compulsory registration should be used for the German economy in accordance with article 7 of the decree in question. The anti-German propaganda campaign abroad which has been caused by the decree would increase in vehemence and any sequestration of property belonging to Jews living abroad would bring grist to the mill of those responsible for the campaign.

"Diplomatic relations might become strained, export might suffer even more, countermeasures against German property abroad might perhaps be taken in consequence. Above all, the possibility would have to be reckoned with that Britain, America, and France particularly, in view of the trade and settlement agreements concluded with those countries, will not submit without voicing their objections to the treatment of their nationals of Jewish race in accordance with German laws contrary to those agreements.

"I can see no reason why foreign Jews should be exempted

completely from the provisions of the decree dated 26 April 1938, especially since the decree stipulates in principle that foreign Jews, too, should be subject to registration. I should, however, like to make the following suggestions designed to mitigate the effect of the probable repercussions abroad:

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"With regard to the use to be made later of property liable to registration belonging to foreign nationals, I suggest that no use be made in principle of property belonging to foreigners living abroad or in Germany."

This is not the language of a man who supported or implemented a measure with which, by the way, he had no part in drafting or enacting. It clearly evidences not only disapproval but is a carefully worded attack designed to point out the dangers in it and his suggestion, or even an insistence, that in the field for which the Foreign Office was competent it should not be applied.

It is to be noted, however, that its recommendations are really limited to those foreign Jewish nationals of countries which were likely to object, which we will discuss later.

On 12 November 1938 Goering called a conference to which von Weizsaecker was invited, but which Woermann attended in his place. Exhibit 1441 [Document 1816–PS, prosecution exhibit] constitutes the minutes of this conference. It arises out of the Crystal Week riots in which Jewish stores were smashed and looted, synagogues burned, and Jews beaten, murdered, or thrown into concentration camps. These riots were organized by the Party. The conference disclosed that there was an intention to rob the Jews of their property rights and there is even mention here of the "final solution" in the event of war with foreign powers.

There can be no question that Woermann fully understood what had been done and what was proposed and that he informed von Weizsaecker about it. Nevertheless, so far as his part in the conference is concerned, it is likewise clear that he insisted that any action against Jews of foreign nations was a matter about which the Foreign Office must be consulted, and this, notwithstanding Goering's reluctance. Neither his position nor that of von Weizsaecker was of such a character that it could influence or control Goering or the other cabinet officials who were present. It is true that he reported to von Ribbentrop by telephone the results of the meeting and that he had thus announced the position of the Foreign Office, and also that "our starting point is that

foreign nations are only to be taken into consideration if the prevailing interests of the Reich compel us to do so."

Assuredly, this is not a stand which discloses any decent moral concepts or any sympathy for the persecuted, but so far as his acts or advice are concerned, he spoke in behalf of those Jews over which his ministry had jurisdiction.

On 25 January 1939 Wiehl of the Foreign Office prepared a memorandum which was sent to all foreign missions and consulates. It states that the purpose of the 1938 legislation was to ascertain the influence of Jewry through an accurate survey of the number of Jewish enterprises, the amount of Jewish property, and to prevent Jews from increasing their property within the German economy, and to confiscate property in Jewish hands; that the setting up of registers and the threat of public characterization of them as Jews had as an aim to cause the Jews to dispose of their enterprises in a speedy way; that by April 1938 the registrations showed that 135,750 Jews of German nationality owned property valued at 7,000,000,000 RM; 9,567 foreign Jews owned property valued at 415,000,000 RM; and 2,269 stateless Jews owned property valued at 73,500,000 RM, and by these measures the expansion of the economic life of the Jews was prevented and their elimination from economic life initiated.

He then described the second group of measures instigated by the decree of 12 November 1938 which increased the number of activities forbidden to Jews. As to foreign Jews, his report recited that the Ministry of Economics on 30 December 1938 had directed Reich agencies to refrain provisionally from foreclosures of retail business's and craftsmen's workshops if owned by Jewish foreign nationals, but that an inventory of these businesses should be ordered and when carried out the Ministry of Economics would give further orders as to how the cases were to be dealt with; that all German stateless Jews were required to deposit their securities and forbidden to sell them without approval of the German Ministry of Economics; that Jewish sellers instead of receiving the payments fixed in the selling agreement would be ordered to receive Reich debentures, and that German economic life would be completely dejudafied in the year 1939.

The report concludes with the statement that the protests of foreign countries with respect to the Jewish nationals had not been met by a general assurance that their nationals would not be subjected to discriminatory treatment, but nevertheless, promises had been made that individual cases would be examined in the light of existing treaties.

On 25 January 1939 Schumberg of the Foreign Office, a defense witness, prepared a monograph entitled "The Jewish Question as

a Factor in German Foreign Policy in 1938." This was distributed to all German diplomatic and consular representatives and discussed, among other things, the typical hysteria of Nazi Germany toward the Jews. It states that the influence of Jewry on Austrian economy had become so great under the Schuschnigg regime that immediate measures had to be taken to exclude the Jews from the economy and utilize Jewish property in the interest of the community; that the reprisal acts adopted because of the von Rath murder so accelerated this process that Jewish shops, with the exception of foreign businesses, had disappeared from the streets completely, and that limitations of the Jewish wholesale and manufacturing trades and of houses and real estate in the hands of the Jews would reach a point where, in a conceivable time, there would no longer be any talk of Jewish property in Germany; that Germany was interested in the dispersal of Jewry; the calculation that as a consequence boycott groups and anti-German centers would be formed all over the world disregards the fact already apparent that the influx of Jews in all parts of the world invokes the opposition of the native population and thereby forms the best propaganda for the German Jewish policy; that there is a visible increase in anti-Semitism and that it must be the task of the German foreign policy to increase this wave; that expectations have been confirmed that the criticism of anti-Jewish measures would only be temporary and would swing over the other way the moment the population learned of the Jewish danger, and that therefore the poorer and more burdensome the Jewish immigrant is to the country absorbing him, the stronger the country will react; that the object of this action should be the future international solution of the Jewish question dictated not by false compassion for the united religious Jewish minority, but by the full consciousness of all people of the danger which it represents to the racial composition of the nations. It further suggests the advisability and necessity of increasing this anti-Semitic feeling throughout the world.

On 31 January 1939 Hitler spoke to the Reichstag, the defendants Woermann, Meissner, Schwerin von Krosigk, Keppler, and Dietrich being present. Hitler there said (*2360–PS, Pros. Ex. 3906*):

> "I believe that this problem will be solved—the sooner the better—for Europe cannot rest again before the Jewish problem has been eliminated.
>
> "If international finance Jewry in and outside Europe should succeed in plunging the peoples of Europe into another world war, then the result will not be the Bolshevization of the world

and a victory for world Jewry, *but the annihilation of the Jewish race in Europe.*"

Those are not idle words nor, in view of the brutal tactics which he had already adopted against opponents both real and fancied, could any of his listeners or readers have any reason to deem them to be mere rhetorical froth. He made similar public announcements during the subsequent years.

On 30 October 1940 the Foreign Office received a memorandum relating to the forced evacuation of the Jews from Baden and the Saar, 7,400 in number, to southern France. The victims were given only one-half to two hours' notice. They were allowed to take personal belongings up to 50 kilograms in weight, and money varying from 10 to 100 RM per person. Old people in homes for the aged were included, even where it was necessary to have them carried to the trains in stretchers. It was the intention then to have them shipped to Madagascar. Woermann received a copy of these reports, as did von Weizsaecker.

The French objected and informed Germany that they could not receive these refugees because of lack of food and accommodations. The Armistice Commission further reported that the German authorities in Lorraine had given the French-speaking inhabitants the choice of departing for unoccupied France or being transferred to Poland, and these people had been falsely informed that this was in compliance with an agreement between the Vichy and German governments. The Foreign Office was also advised of General von Stuelpnagel's request for directions as to what answer should be given the French.

On 21 November 1940 Rademacher of Department Deutschland of the Foreign Office wrote his chief, Luther, that in his opinion Abetz, the German Ambassador to the Vichy government, should be instructed to tell the French to settle the matter quietly and not mention it again in Wiesbaden (site of the Armistice Commission), and that the German commission should tell the French that the matter would be settled in Paris.

On 22 November von Ribbentrop's office gave instructions via von Weizsaecker and Woermann that the note of the French should be treated in a dilatory manner, and saying further, "these persons are not to be readmitted under any circumstances." Luther on 25 November asked Kramarz, of Political Division I, to instruct Hencke to inform General von Stuelpnagel of von Ribbentrop's decision, and that the operation was carried out with the approval of Hitler.

On the same date, by von Weizsaecker's order, Woermann prepared a memorandum for von Ribbentrop's use in a conference

which the latter expected to hold with Laval of the Vichy government. It dealt with a number of suggestions, including the transfer of the two French departments from the command of the military commander in Brussels to the military commander in France, objections to the transfer of the site of the Vichy government from Vichy to Versailles or Paris, and the matter of the deportation of the Jews from Baden and the Saar to southern France. With regard to this latter question, Woermann says (*NG–4337, Pros. Ex. 3655*):

> "Since the return of the Jews to Baden cannot take place, this question also should not be discussed. In any case, Mr. Laval should be informed that further transports of this nature are not to be expected, in which case, however, the Reich Leader SS is first to be consulted."

Von Weizsaecker's explanation is that when he heard of the transportation of these Jews to France he first had the feeling that they might have a more lenient fate than they would have received in Germany, and then the reports came in about abuses they suffered in camps in the Pyrenees; that when he first heard about the transport to the East he thought they would be better off there than in the Pyrenees, because if they were used for labor they would be treated decently, but it finally turned out that the Jews would have been better off in France anyhow, and that with the modest means of Foreign Office influence within the scope of diplomatic possibilities, he was not absolutely able to determine where the lesser evil was and where he could best intervene.

Woermann's defense is that these measures were taken without his knowledge and the decision that these unfortunate people would not be permitted to return to Germany had already been decided by his superiors.

It is clear from the evidence that this brutal action was initiated by the local Gauleiter, not only without the knowledge of the Foreign Office, but without the knowledge of the Ministry of the Interior. No criminality therefore can be charged against the defendants von Weizsaecker and Woermann so far as the initiation of this deportation is concerned. The decision to refuse the French demand that they be returned was von Ribbentrop's.

Having neither originated nor implemented this crime, they should be and are acquitted with respect to it.

The defendant von Weizsaecker has referred to [NG–4893, Prosecution] Exhibit 1688 as evidencing his efforts to sabotage, or at least minimize, the effect of the anti-Jewish measures proposed in France. This correspondence started in August 1940 by a communication from Abetz, German Ambassador to the

Vichy government, in which he requested approval to certain proposed anti-Jewish measures, which were (*NG–4893, Pros. Ex. 1688*):

(1) A ban on the re-immigration of Jews into the occupied territory;

(2) Registration of all Jews in the occupied portions of France;

(3) Marking Jewish places of business; and,

(4) Appointing of trustees for Jewish enterprises.

He ends with the statement—

> "These measures can be explained by reason of the fact that they lie within the interest of security for the occupying forces and are to be executed by the French authorities."

Luther asked the SS for an opinion and Heydrich expressed no objection other than that the measures should be carried out by the Security Police in conjunction with the French. Luther then wrote Abetz and expressed the doubt as to whether or not the opposite of the desired effect might not result unless ideological preparations first took place, and that it would be desirable that the intended measures be first carried out by the Vichy government, which would then have to bear the responsibility in the event of failure.

On 9 October Schleier of the Embassy reported that the military commander in France had issued the necessary regulations which applied to all Jews of whatever nationality, but that the field offices had been directed to exempt American Jews, and that a number of foreign nations had inquired as to the effect upon their nationals. Schleier asked for immediate instructions and especially as to how foreign Jews in the diplomatic and consular offices were to be treated. On 12 December Rademacher in a memorandum stated that inquiry had been made of Abetz as to whether all these measures would affect foreign Jewish diplomatic representatives and that the latter had replied that if Jews belong to the diplomatic corps they were exempt, but if they were employees of diplomatic representatives the contrary was true, and that State Secretary von Weizsaecker, at a conference in the Foreign Office directors' office, was in agreement with this ruling, particularly since the diplomatic representatives concerned were accredited to France and not to the German Reich.

Almost immediately thereafter (19 December 1940) von Ribbentrop made a decision that the American notes of protest against measures affecting Jews of American nationality, if again submitted, should be answered by stating that the measures were adopted for reasons of security, and disapprove the German field commander's instructions to exempt American Jews from

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the application of the ordinances, and stated (*NG–4893, Pros. Ex. 1688*):

> "It would be a mistake to reject the protests of friendly nations, such as Spain and Hungary, and to show weakness, on the other hand, toward America."

It is somewhat difficult to understand von Weizsaecker's claim that in this instance he had adopted an attitude favoring the Jews.

What then did von Weizsaecker's concurrence in Abetz's suggestion actually amount to? Without question, unless Germany in 1940 desired or intended to run the risk of a final break of relations with the United States, it was bound to accord to American diplomatic representatives the immunity to which, under international law, they were entitled. At that time, at least, this would have been catastrophic from the German political standpoint. Von Weizsaecker's position is merely a concurrence in the obvious. But it is to be noted that he did not either recognize or recommend that it should be extended to Jewish employees of American diplomatic representatives. It is a decision which was, at best, exceedingly doubtful. He concurred in limiting diplomatic immunity to Jewish members of the diplomatic corps. In addition, he offered as justification a pure sophistry, namely, that these diplomats were accredited to France and not to Germany.

It has never been claimed by the defense that Germany had annexed France or any part of it, other than Alsace-Lorraine. It merely had military possession of part of the country; the Reich had never suggested that the presence of foreign diplomats in occupied France was improper, nor had it asked for their recall. The German Embassy received and answered inquiries made by these diplomats with respect to the treatment of their own Jewish nationals. If these documents prove anything, then it was the fact that at the time the defendant von Weizsaecker was not attempting to help or mitigate the conditions of the Jews, so far as foreign nationals were concerned, but he was engaged in aggravating their lot. Had his intentions then been those which he now claims, and had he felt that any appeal to von Ribbentrop on humanitarian grounds was useless, the way was open to him to have used the very avenue of approach to which he complains he was so often compelled, namely, to call attention to the fact that the proposed action was contrary to the Hague Convention, that it was extremely doubtful whether Germany had the right to abrogate the usual immunities to which the employees of diplomatic representatives were entitled, and also to point out the

foreign political repercussions which would arise if they were not exempted from the proposed measures. He did nothing.

As early as 27 April 1937 the defendant von Weizsaecker laid down rules for the future handling of the Palestine question (*NG–4075, Pros. Ex. 2109*)—

> "1. A splitting-up of world Jewry is to be preferred to the establishment of a state in Palestine.
>
> "2. If German foreign policy should become actively concerned with this question, direct pressure on the British mandatory power would, at least for the present, seem inadvisable.
>
> "These rules, however, did not prevent the Foreign Office from informing the domestic German agencies of its attitude, so that in measures of domestic policy for Jewish emigration, consideration should be given to the fact that Jewish emigration to Palestine should not be encouraged at all costs, but rather that their emigration to any other place in the world is to be preferred * * *."

and that—

> "* * * German authorities stationed abroad are to be given instructions concerning the attitude to be adopted by them toward the Palestine question."

With respect to Luther's alleged independence of action, the defendant von Weizsaecker testified that at the end of August 1942 von Ribbentrop ordered Luther that in the event of further steps concerning the deportation of Jews and similar matters, it should be brought to the attention of State Secretary von Weizsaecker; that up to that time the rule had not been enforced. He further says that in this dreadful and tragic Jewish question he had to let many things "pass through my hands upon instruction from higher agencies that were objectionable to me. I admit that."

On 11 August 1942 Luther prepared a memorandum which was distributed to von Weizsaecker, Woermann, and von Erdmannsdorff relative to the discussions he had had with the Hungarian Minister regarding the treatment of Hungarian Jews in France, and the Minister's protest against this action.

On 6 October 1942 Luther again reported a conference with the Hungarian Minister about Hungarian Jews in the territories occupied by German troops, Hungarian Jews in the Reich, and the evacuation of all Jews from Hungary itself. This was sent to von Ribbentrop via von Weizsaecker and was distributed to and initialed by Woermann.

On 14 October 1942 von Weizsaecker himself received the Hungarian Minister and discussed the Jewish problem with him and reminded him of von Ribbentrop's comment that the recent air raids on Budapest were evidence that the Jews there contributed to spreading panic and that the German Minister at Budapest would have carried out his instructions regarding the Jewish problem before the Hungarian Minister arrived there. A copy of this went to Woermann and at the bottom appears a note to make sure that the German Minister called on the Hungarian Foreign Minister as per his instructions prior to Sztojay's arrival.

On 9 March 1942 Eichmann of the SS wrote the Foreign Office that it was intended to deport to Auschwitz 1,000 French and stateless Jews who had been arrested in France in 1941, asking if there was any objection.

On 11 March the SS again wrote the Foreign Office that it was desired to include 5,000 more Jews from France. On the same day Luther wired the German Embassy in Paris, forwarding the request and asking for comment, and Paris replied, "No objection."

On 20 March Rademacher, by order, informed the SS that the Foreign Office had no objections to these 6,000 Jews being deported. This was initialed by Woermann and von Weizsaecker, and contains the latter's comment, "to be selected by the police."

There remains no shadow of doubt that both Woermann and von Weizsaecker were informed of this nefarious plan and that it received their official approval. There is nothing in the record to show that they questioned its propriety, objected to or protested against it, or availed themselves of the opportunity to suggest to von Ribbentrop that even from the viewpoint of German foreign policy its execution would be a catastrophic mistake in that it would not only alienate public sentiment in France, but would arouse a wave of horror and resentment throughout the world. Neither claims that there was any legal justification for this deportation or suggests it was other than a flagrant violation of international law and of the provisions of the Hague Convention.

Woermann's excuse is that he was not able to do anything and that his cosignature meant that he saw no valid political reason which could be urged against it and that the reason that the Foreign Office communication was signed by the State Secretary and by two other state secretaries, including himself, was that it was an important matter. However, his own witness, Lehmann, an old civil servant in the Foreign Office, called as an expert on Foreign Office practice, does not bear him out. He testified,

somewhat reluctantly, that when a Foreign Office official initialed a draft he thereby outwardly approved it, even though he may have had mental reservations as to its propriety.

The defendant Woermann knew that there were cogent reasons of a political nature why the measure should be disapproved; he knew that it was in violation of every principle of international law and in direct contradiction of the Hague Convention.

Von Weizsaecker asserts that this occurred at a time of repeated attempted attacks on members of the Wehrmacht and Hitler had ordered frequent shootings of hostages in France; that these Jews were already interned and were in danger, and one could very easily come to the conclusion that the deportations to the East might involve less danger to them than remaining where they were; that the name Auschwitz did not mean anything to anybody at that time. He does not state that this was, in fact, his reason for not objecting, but that it was probably his reason. He further asserts that the Foreign Office did not instigate or execute these measures and its point of view or opinion could not prevent them. The latter contention, however, is hardly tenable, in view of the fact that Eichmann of the SS made specific inquiries as to whether the Foreign Office had objections.

While we are ready and anxious to accord to every defendant the benefit of any reasonable doubt to which he may be entitled, it is difficult to find any such doubt here, even though we assume that neither defendant, at that time, had knowledge that Auschwitz was a death camp. Nevertheless they knew and were well informed of the fate of any Jew who came into the tender hands of the SS and Gestapo; they knew what had been the fate of the Jews of Poland, the Baltic states, and Russia; they knew what had been the horrible fate of German Jews.

While admitting that many things passed over his desk and received his initials of approval as to which he harbored mental reservations and objections, he states he remained in office for two reasons: first, that he might thereby continue to be at least a cohesive factor in the underground opposition to Hitler by occupying an important listening post, maintaining members of the opposition in strategic positions, distributing information between opposition groups in the Wehrmacht, the various governmental departments, and in civil life; and second, that he might be in a position to initiate or aid in attempts to negotiate peace. We believe him, but this, while it may and should be considered in mitigation, cannot constitute a defense to charges of war crimes or crimes against humanity. One cannot give consent to or implement the commission of murder because by so doing he hopes eventually to be able to rid society of the chief mur-

derer. The first is a crime of imminent actuality while the second is but a future hope.

When the SS inquired whether the Foreign Office had any objections, it was the defendant's duty to point them out. That is the function of a political department and a state secretary of a foreign office. It is not performed by saying or doing nothing. Even the defendant's witness, von Schlabrendorff, himself an active leader in the resistance movement, and a participant in the plot of 20 July 1944, testified that being a member of that movement did not justify one in becoming a party to the program of the murder of Jews. As to these and like instances, we find the defendants von Weizsaecker and Woermann guilty.

On 28 August 1942 a conference was held in the office of the RSHA at which were outlined the plans for the immediate evacuation of Jews from occupied and foreign countries to Auschwitz, in which it was said that only stateless Jews could be deported for the time being, in view of foreign protests, and that with regard to the foreign Jews, negotiations were still in progress with the Foreign Office and had not yet been concluded; that under no circumstances was it desirable to repatriate foreign Jews to their country, and the request of Switzerland for the return of Swiss Jews could not be granted.

It was not criminal for the defendants von Weizsaecker or Woermann to have been present at or to have received minutes of this meeting. But on 24 September 1942 Luther wrote von Weizsaecker that von Ribbentrop had given instructions to hurry as much as possible the evacuation of Jews from the various countries of Europe and that orders had been given to contact the governments of Bulgaria, Hungary, and Denmark with the object of starting the evacuation from those countries; that with respect to Italy, von Ribbentrop had reserved this for himself and it would be discussed either between Hitler and Mussolini or between von Ribbentrop and Ciano.

Luther stated (*NG–1517, Pros. Ex. 1457*):

> "All steps taken by us will be submitted to you at the time for your approval."

A copy of this communication went to Woermann.

On 20 October 1942 von Weizsaecker wrote to von Ribbentrop, with copy to Woermann and to Luther, that he had asked the Hungarian Minister, on his return from Hungary, to report on what the people of Budapest thought of the German proposals concerning the treatment of Jews. He also reported on the same date the result of a conversation which he had had with the

Hungarian Minister in which he stated (*NG–5728, Pros. Ex. 3766*):

"The way Hungary treated the Jewish problem has, so far, not been in accordance with our principles."

On 6 October Luther reported to von Ribbentrop, through von Weizsaecker (it was initialed by him), regarding a conference which he had had with the Hungarian Mnister, in which he had informed Sztojay that Hungary was either to take back its Jews or permit Germany to deport them to the East; that the latter had, in an attempt to avoid the matter, inquired whether Italy had agreed to like measures and was assured that it had; that Luther then brought up the matter of a settlement of the Jewish problem in Hungary which the Hungarian Minister attempted to avoid by the same technique. It was this memorandum which led to von Weizsaecker's conference heretofore mentioned.

The actual deportation of Hungarian Jews did not commence until the late spring of 1944 and von Weizsaecker took his post as Ambassador to the Vatican in May 1943, so he had no further connection with the Hungarian-Jewish question. While there can be no doubt that his conference with the Hungarian Minister in fall of 1942 was designed to implement Jewish persecution and deportation, it was abortive and the Hungarians could not be induced or compelled to adopt the German anti-Jewish campaign until in 1944; the German troops marched in; Veesenmayer took up his duties as German Minister and Plenipotentiary, overthrew the Kallay Cabinet, put in German puppets who cooperated in the concentration of and deportation of the Jews.

Von Weizsaecker's connection with these deportations is so slight and insignificant that we acquit him with respect thereto.

Holland and Belgium.—That both von Weizsaecker and Woermann had knowledge of the deportation and subsequent death of Dutch Jews deported to the Reich is beyond doubt. Nor do we find that either took any action or made any objection to the uselessly cruel procedure. Sweden as the Protecting Power for Holland called attention to the fact that of 600 Dutch Jews deported from Amsterdam to Mauthausen, 400 had died, and it appeared from the list that deaths occurred on specific days; that the prisoners in question were nearly all younger men; that the Swedish Legation had repeatedly applied to the Foreign Office for permission to visit Dutch Jews in the camps which applications had been refused.

Luther, in writing to the RSHA, recommended that when deaths occurred it should never appear that they occurred on fixed days. It is significant that Woermann, in reporting to

von Weizsaecker and von Ribbentrop regarding the report given to him by Minister Bene at the Hague, stated (*NG–2805, Pros. Ex. 1677*):

> "As to results of the slaying of a WA man by an unidentified Jewish assassin, 400 Jews * * * have been brought from the Netherlands to Germany to 'work here'." (The single quotation is by Woermann.)

On 22 June 1942 Eichmann of the SS wrote Rademacher of the Foreign Office that provisions had been made to run daily trains, with a capacity of 1,000 persons each, starting in the middle of July, in order to deport to Auschwitz 40,000 Jews from occupied French territory, 400,000 from the Netherlands, and 10,000 from Belgium. This was to include able-bodied Jews not living in mixed marriages or not citizens of the British Empire, the United States, Mexico, the enemy states of Central South America, or of neutral and allied states. He requested that note be made of the proposals asking if there were any objections against the matter on the part of the Foreign Office.

On 28 June Luther wired the Embassy in Paris, the Foreign Office representative at Brussels and Bene, transmitting the Eichmann message and requesting an early reply. This was submitted to von Weizsaecker and Woermann and section POL II before dispatch.

On 2 July Abetz replied that there was no objection providing the measure was carried out in such a manner as to add to the anti-Semitic sentiment, but that it should be first applied to foreign Jews and to French Jews only if there were not sufficient foreign Jews to fill the quota. On 10 July Luther wired Abetz it was not possible to give priority in deportation to foreign Jews; that further orders relating to expulsion of foreign Jews were pending; that the evacuation proposed was to be carried out without delay.

On or about 13 July Bene at the Hague reported that the first two trains, each containing 1,080 Jews, had left, and that the RSHA had suggested that the deported Jews should be deprived of Dutch nationality in order to avoid intervention by Sweden, the Protective Power; that as a result of a conference held that day, the Reich Commissioner was prepared to issue a decree depriving Dutch Jews of Dutch nationality on the ground that all Jews are enemies of Germany and if no objections were raised by the Foreign Office this deprivation of Dutch nationality would then apply to all Jews of Dutch nationality; and not only to those who had been deported, and asked for the Foreign Office's opinion.

On 20 July Rademacher submitted a memorandum to von Weizsaecker and Woermann with the request for instructions, suggesting that Bene's proposal seemed too far-reaching, but the D–III of Department Deutschland considered it desirable that Dutch legislation concerning Jews be adjusted to that of the Reich so that immediately all Dutch Jews resident abroad, or who had transferred their residence abroad, would lose their nationality as had German Jews under the same circumstances through the Citizenship Law of 25 November 1941.

On 29 July Luther submitted to von Weizsaecker and Woermann a draft of a letter to Eichmann that the Foreign Office had no objection in principle to the deportation but in view of the psychological effect, requested that first stateless Jews be deported, thus including a large number of foreign Jews who had emigrated to the West, of whom there were nearly 25,000 in the Netherlands, and that for the same reasons Brussels would first select only Polish, Czech, Russian, and other Jews, but that Jews of Hungarian and Rumanian nationalities could be deported, but their property must be secured in each case.

D–III prepared a second memorandum concerning Bene's proposal that all Dutch Jews be deprived of Dutch nationality, stating that it was irrelevant whether Jews had left the country voluntarily or by deportation, and that where Jews were deported to eastern territories not incorporated into the Reich, the Protective Power was as little competent as to those areas and territories as it was in the Netherlands; that frequently it could not be determined whether residence outside the country was due to voluntary emigration or deportation, and on principle no information whatsoever would be given to the outside world by the police regarding persons who had been deported to eastern territories, and thus, visits to the camps, etc., were absolutely prohibited; that the deportations from the Netherlands were proceeding without incident; and the Christian Jews were being interned temporarily in Holland itself.

Von Weizsaecker submitted this memorandum to the legal division for opinion, which was rendered on 31 July 1942 and called attention to the fact that Sweden was still recognized as the Protective Power for the Netherlands because if her functions were withdrawn, the Dutch authorities in Dutch colonies would cease to recognize Switzerland as Protective Power for Germans residing in those places. He pointed out that Sweden's authority related to the German Reich and the occupied territories, and not to Holland directly, and therefore the Foreign Office had repeatedly suggested that, in case internment measures were taken against Dutch citizens, they should be undertaken in Hol-

land in order to prevent the Swedish delegation from requesting permission to visit the internees; that if Jews were deported from Holland it could be assumed that international Jewish circles would endeavor to persuade Sweden to intervene on behalf of these Jews, and Germany could not reject such attempts on the ground that the Jews had been deprived of Dutch citizenship by German authority; therefore the regulations suggested by Bene would not achieve their purpose.

The opinion called attention to the fact that after several hundred Dutch Jews had been taken to Mauthausen the police had turned down Sweden's request to inspect the camp but had currently forwarded death certificates to the relatives of those Jews in the Netherlands from which it could be seen that "gradually" all had died; that if the deportation of Dutch Jews was to be carried out, it would be necessary to determine whether the police should continue to furnish interested parties with material from which they could authentically determine the result of the measures taken; that as long as Jewish internees were present in Mauthausen, the Swedish delegation made renewed requests to visit the camp whenever further death certificates arrived, and if the deportation of Dutch Jews was unavoidable, it would be expedient if the police would not allow any information to leak out with regard to the whereabouts or, in possible cases, death; and it would be presumably possible to turn down Sweden's request to visit the camp, but in that event it would be impossible to avoid the risk that Germans in Dutch colonies might experience worse treatment because of the measures taken against Dutch Jews.

Von Weizsaecker referred this matter, on 1 August, to Department Deutschland for final opinion, and on 10 August it reported to von Weizsaecker and Woermann that it adhered to the proposals which had been made on 20 July, whereupon von Weizsaecker recommended that Bene be asked if the matter was still of importance and that the reasons stated by him at the time were not sufficient for the measures planned, and therefore they could be foregone altogether if no new motives were available.

It may well be, and we think it likely, that von Weizsaecker's request for the legality of the operation was designed to hamper and, if possible, to prevent these deportation measures, at least so far as Jews of Dutch nationality were concerned. It is significant, however, that no suggestion is made as to the illegality or impropriety of the deportation of foreign Jews living in Holland, and that the opinion of the legal department suggests the means whereby, if deportations were carried out, Sweden as the Protective Power would be unable to exercise its functions. No

explanation is offered by the defendants von Weizsaecker or Woermann as to why these offensive suggestions were not eliminated from the legal division's opinion.

Nevertheless, the opinion served to prevent the proposed decree from being enacted, so we therefore hold that neither von Weizsaecker nor Woermann can be held criminally liable with respect to this incident.

On 17 December 1942 the Swedish Minister endeavored to open a conversation with von Weizsaecker on the matter of Sweden's willingness to accept Norwegian Jews, and was informed by him that he would not enter into any official discussion on the subject, and if the Swedish Minister was commissioned by his government to transmit this information, von Weizsaecker would predict failure from the outset.

Technically Sweden had no legal right to intervene, and undoubtedly von Weizsaecker's prediction of failure in the event it did so was accurate. Here he owed no official duty to do other than he did. We must, therefore, exonerate him with respect thereto.

Von Weizsaecker and Woermann in France.—On 15 September 1941 Rademacher reported to von Weizsaecker with request for directions, the request of the Swedish Legation in France, acting as Germany's Protecting Power, for the issuance of passports, police certificates, birth, marriage, and death certificates, and other identification papers for German Jews interned in unoccupied France so that the individuals involved could emigrate abroad. Rademacher states that in agreement with the Ministry of the Interior and the Chief of the Security Police, it was determined that the emigration was undesirable as it would thereby decrease the already small chance, in view of foreign immigration quotas, to get passage abroad for Reich Jews; that Department Deutschland intended to request the Swedish Legation, as representative to Germany, to refrain from accepting more applications of German Jews living in unoccupied France.

On 19 September 1941 he reported that in accordance with directions he had consulted Albrecht concerning this matter, who proposed that no decision be taken at the time, but that it be treated dilatorily and then resubmitted in 4 weeks, because in the meantime it was likely that German Consulates would be installed in the whole of France, in which case Sweden's functions as the Protective Power would become ineffectual.

All this occurred before the adoption of a definite program of deportation of Jews to the East, and the Reich was still toying with the idea of forcing all Reich Jews to emigrate. The discrimination here is only between Jews of German nationality

residing in Germany and Jews of German nationality residing in France. We find no criminality in this transaction.

On 30 October 1941 Schleier of the Embassy in Paris requested directions from the Foreign Office regarding the disposition to be made of foreign Jews who had been arrested by the military commanders in France in connection with alleged participation in Communist and de Gaullist plots for the assassination of Wehrmacht members. He states that foreign consulates had requested the Embassy to assist in having their Jewish nationals so arrested, freed.

Von Weizsaecker, on 1 November, answered, stating that there were no objections against the arrest of Jews of European nationality and no diplomatic complications were expected, but the arrest of Jews of American nationality created a dangerous situation and it must be expected with certainty that the North American governments, as well as those of the Spanish-American states, would make these arrests the object of diplomatic intervention, and if Germany refused to release Jews of American nationality, it was to be expected that the governments affected would take retaliatory measures against Reich citizens, and thereby Germany could get the worst of it; that it was intended to instruct the Embassy in Paris to request the military commander and the chief of the SD to release American Jews, provided they were not liable to criminal prosecution.

Von Ribbentrop approved this suggestion. Von Weizsaecker further stated that it should be considered as a matter of precaution, and it might be well to expel all Jews who were American citizens from occupied territories in order to eliminate friction. To this von Ribbentrop said, "No." It was, of course, as much a breach of international law to arrest Jews of European nationality as it was those of American nationality, and the reasons which von Weizsaecker gave for exempting American Jews from unlawful arrest are not based on any high moral plane. However, we are interested in what he advised, and not the reasons he gave, and we do not overlook the fact that he was not addressing his recommendations to a man who had any conception of international or other morals. We do not believe in this instance von Weizsaecker was subject to any criticism. He probably went as far as he thought was practicable.

On 19 May 1942 Woermann, on orders from von Weizsaecker to settle with Department Deutschland the question of whether American and British Jews in France should be exempted from anti-Jewish measures which were being taken there, reported that he had come to the conclusion that they should not be given any preferential treatment, and called attention to the fact that

Bene had reported that in Holland all foreign Jews had been exempted; that he thought it expedient that a uniform policy should be followed in all occupied countries. He recommended that Abetz be requested to give his opinion as to the possibility of inducing the French Government to issue a simultaneous, adequate decree for both unoccupied and occupied France. It is quite apparent from this document that Woermann was making no attempt to accord to British and American Jews the rights to which they were entitled under international law.

Italy.—On 24 July 1942 Luther prepared notes for a report on the deportation of Jews. This was submitted to von Weizsaecker, who initialed it. Luther states that Ambassador Abetz had expressed disappointment that all foreign Jews had not been evacuated from France, and that if this could not be done at once, at least the Italians should be induced to call their Jews back from France, or at least agree to their evacuation to the East. Luther suggested that the Italian Government be approached on the subject.

On 27 November von Weizsaecker and Woermann cosigned with Luther a telegram sent to the Embassy at Rome directing that the suggestion be made to the Italian Government that, if it could not consent to the application to its own Jews in France of the measures proposed, it withdraw them from that country by the end of that year. The instruction was carried out and the matter was taken up on several occasions with the Italian Government.

Luther had complained that the attitude of the Italians toward the Jewish question was entirely unsatisfactory, and that it interfered abroad on behalf of Italian Jews; that a clear solution of this problem must be had because it was impossible that, in Germany and areas controlled by it, the Italian attitude should be followed or permitted, and suggested a strong note be sent to Italy on the subject.

Thereafter von Ribbentrop instructed the German Ambassador in Rome to inform Foreign Minister Ciano that as a special favor Italian Jews could remain in German-controlled territories only until 31 March 1943, after which Germany reserved the right of free action against all Jews in Reich-occupied territories, and Italian Jews could not be excepted.

Luther ordered the Paris Embassy to instruct the military commander in France that in negotiating with the Italian commander to state that cooperation was absolutely necessary, and that Germany was surprised to learn from the Vichy government that the Italian Armistice Commission had made protests against the order. Both von Weizsaecker and Woermann saw and initialed these instructions before they were dispatched.

In February 1943 the Foreign Office instructed its Ambassador at Rome to endeavor to persuade the Italian Government not to recognize as full-fledged Italian citizens those Jews who had obtained citizenship after a certain deadline; that the Italians should revoke citizenship granted to Jews who were not residing in territories under Italian sovereignty at the time of Italy's entrance into the war. This was submitted to and initialed by Woermann before dispatch. It is quite apparent from the documents that Italy, while free with promises, failed to fulfill them.

While it is clear that both von Weizsaecker and Woermann participated in this matter, the record does not disclose that their efforts ever reached fruition, or that the crime was consummated. Under these circumstances they must be and are exonerated.

Croatia.—In October 1941 Rademacher requested von Weizsaecker to decide whether Slovakian and Croatian Jews could be included in the deportations to the East, and stated that, in his opinion, no objections would be raised because the Slovakian and Croatian states had themselves taken measures of extremely severe nature against Jews, but it was suggested that, as a matter of diplomatic courtesy, the governments in question should be informed and strong suggestions made that they recall their Jewish nationals from Germany or that they permit Germany to deport them to the East.

Von Weizsaecker and Woermann initialed this, and the Legations in Pressburg, Agram, and Bucharest were so advised. It is clear that von Weizsaecker at least must have approved Rademacher's suggestion. However, there could be no crime in giving those countries an opportunity to repatriate their Jews and a failure to have done so would have been criminal. Here, therefore, von Weizsaecker and Woermann did precisely what should have been done, namely, left some opening for these Jews to escape deportation to the East.

[Prosecution] Exhibit 1715 [NG–3565] and the documents following relate to German efforts to deport all Croatian Jews and recite the difficulties encountered by the unwillingness of the Italians to cooperate. Kasche, German Minister, and the SS proposed to arrest Jews even in territories occupied by Italian troops, but von Weizsaecker insisted on waiting until the German Ambassador in Rome could be heard from. The matter was delayed over a considerable period and the Italians played a double game of agreeing in Rome that their troops would cooperate but, in the field, failing to give such cooperation.

After a long lapse some, but not complete, success was achieved, but we find nothing in the record to indicate that von Weizsaecker or Woermann aided the campaign and, in fact,

there are strong indications that tend to show the opposite. This was a matter in which not only Himmler and the SS, but also von Ribbentrop and Hitler, took a direct interest and part. Inasmuch as von Weizsaecker and Woermann did not substantially participate in the matter they should be and are exonerated with respect thereto.

Serbia.—While von Weizsaecker and Woermann were informed of the proposals to shoot all male Serbian Jews and to assemble the women, old people, and children in local concentration camps and the desire of Benzler and the defendant Veesenmayer to make a quick, Draconic disposition of the Serbian Jews, it is certain that von Weizsaecker endeavored to keep clear of this matter. He declared that because of the Hitler order the Foreign Office was competent to deal with the deportation of Serbian Jews to other countries, but that neither Benzler nor the Foreign Office had any competency to take an active part in the manner in which the competent military and internal authorities tackled the Jewish problem within the boundaries of Serbia; that those agencies received their instructions from other sources rather than the Foreign Office, he so advised Benzler.

To this Luther disagreed, calling attention to the fact that he had been authorized by von Ribbentrop to discuss the matter with Heydrich, but by this time it appeared that the military authorities in Serbia had shot the Jews in question, and thus, the matter had been settled; and von Weizsaecker said he was no longer interested in issuing any directions to Benzler. Under these facts neither von Weizsaecker nor Woermann can be held guilty of participation in the crimes in question, and as to them they should be and are exonerated.

Bulgaria.—The evidence does not disclose that von Weizsaecker or Woermann took any active part in the deportations from Bulgaria other than Luther's report which contains the statement that the Legation at Sofia was instructed by a note signed by von Weizsaecker, Woermann, and von Erdmannsdorff that "if the question is put from the Bulgarian side as to whether Germany is ready to deport Jews from Bulgaria to the East, the question should be answered in the affirmative; but in respect to the time of deportation, it should be answered evasively."

The measures against Bulgaria's Jews actually took place during Steengracht von Moyland's incumbency as State Secretary. While he was informed of the infamous things proposed and done, and while it is evident that Bulgaria's actions were in a measure encouraged by the Legation at Sofia, acting under orders, the record is not sufficiently clear, and it is not likely that Steengracht von Moyland participated in the matter.

Von Ribbentrop's direct intervention in matters of this kind occurred so often that we cannot say with reasonable certainty that the actions of the Legation at Sofia can be charged to Steengracht von Moyland rather than to orders given by von Ribbentrop. There are also indications that the German Minister at Sofia endeavored to divert, or at least delay, the matter by suggesting that everything that could be done had been done and that in due course Bulgaria would take the action desired by the RSHA.

In this respect Steengracht von Moyland should be and is exonerated.

Rumania.—With regard to the measures against Rumanian Jews, it does not appear that, with the exception of a note to Rumania, which von Weizsaecker initialed and approved, giving it an opportunity to repatriate its Jewish nationals or to permit them to be deported to the East, he or Woermann took any part in the Rumanian deportations, although, of course, they were informed of its progress.

Exhibit 1781 [NG–3559, prosecution exhibit], however, clearly establishes that von Weizsaecker and Woermann knew of the murder of Rumanian Jews on arrival in the East.

On 19 August 1942 von Rintelen of von Ribbentrop's office wired the Foreign Office and reported that evacuation transports from Rumania would be started on 10 September, and the Jews would be removed to the Lublin Ghetto where those fit for work would be allocated for that purpose, and the remainder given "special treatment," and that arrangements had been made for the Jews to lose their nationality upon crossing the Rumanian border, that negotiations with the Rumanian Foreign Office had been under way for some time and could be considered entirely favorable. He ends by asking approval to carry out the deportation.

This was a special telegram; and it is our opinion, and we so find that it came to von Weizsaecker's attention as, according to practice, the distribution of such telegrams was determined by his office.

"Special treatment," in the phraseology of the Third Reich, meant death.

On 20 August 1942 Klingenfuss of the Foreign Office wrote Eichmann of the RSHA that following protests from various Rumanian representatives in Germany against the inclusion of Rumanian Jews in the deportations, discussions had been had between the German Legation and the Rumanian Government which resulted in the Rumanian Minister of Foreign Affairs giving assurances that he would inform Rumanian authorities

not only in the Protectorate, but generally, that his government would permit the Reich to submit Rumanian Jews to these measures; and consequently the Foreign Office had no doubt that the deportation, which to some extent had been interrupted, would be resumed, and Rumanian Jews in the Reich and in occupied territories would be included in these anti-Jewish measures.

This was submitted before dispatch to the political division, and it is a reasonable inference that both Woermann and his chief, von Weizsaecker, were informed of this development.

STEENGRACHT VON MOYLAND

Late in 1943 or early in 1944 Steengracht von Moyland organized, at von Ribbentrop's request, an "Office for Anti-Jewish Action Abroad," and in April a conference of specialists for the Jewish question was held at Krummhuebel, at which Dr. Six, Ambassador Schleier, von Thadden, Ballensiefen of the SS, and many others spoke. At the close of the speeches the following requests were made of the representatives of the missions:

(1) To suppress all propaganda, even if camouflaged as anti-Jewish, *liable to slow down or handicap the German executive measures;*

(2) To make preparations for a comprehension among all nations of the executive measures against Jewry;

(3) To make repeated reports about the possibility of carrying out more severe measures against Jewry in the various countries by using diplomatic means; and, finally

(4) That as to the details of the state of the executive measures in various countries, which are to be kept secret, it has been decided not to enter them in the minutes of the meeting.

On 25 July 1944 Schleier of the Foreign Office reported that an extensive card index, comprising 40,000 names of Jews of all times and all countries, had been made available for the anti-Jewish campaign abroad "so as to serve our purposes," and that these index cards of the most important living Jews of all countries would be available and that the information bureau would shortly be in a position to deal with inquiries as to the origin and kinfolk of Jews or persons suspected to be Jews.

Steengracht von Moyland insists that this whole scheme was a wild idea of von Ribbentrop's and that nothing of substance ever arose from it, and explains the card index as being a mechanism to prevent persons who were not Jews from being charged as such. We cannot accept either explanation. The record discloses that the Office for Anti-Jewish Action Abroad embarked upon and conducted these functions. It was organized by and was

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subordinated to Steengracht von Moyland. His explanation of the Jewish card index is without merit. It did not purport to be a list of all Jews and assuredly it was not a list of non-Jews. It is perfectly clear that its proposed use was to identify Jews and their kinfolk in order to carry out the purposes of the office which he organized.

On 1 June 1944 Steengracht von Moyland received a memorandum regarding the major action of deportation against the Jews of Budapest whose deportation up to that time had been delayed and defeated because of Admiral Horthy's attitude, in which it was said that this would arouse greater attention abroad and cause violent reaction; that Germany's enemies would cry out and talk of manhunts and by the use of atrocity reports try to stir up hatred at home and in neutral countries. It was therefore suggested that these untoward events could be averted by creating external provocations and reasons, such as the discovery of explosives in Jewish homes and synagogues, the unearthing of sabotage organizations, revolutionary plots, attacks on the police, and illegal transactions aimed at undermining the Hungarian monetary system, which could then become the occasion for the great raid.

Steengracht von Moyland requested that Veesenmayer be informed of these situations and his opinion obtained. This was done.

On 6 June Veesenmayer reported that this important Budapest action had been fixed and the date arranged; that he thought the propagandistic preparatory measures would be futile since it was well known that for weeks already Jewish community houses and synagogues had been under close observation, and that Jewish property had either been confiscated or blocked, and that the Jews were very much restricted in moving about.

That the proposed deportation finally took place is well known. There was nothing in Steengracht von Moyland's action to show disapproval or any attempt to stop, hamper, or mitigate any operation. He consciously participated in the program.

The activities which he displayed in the Krummhuebel anti-Jewish propaganda mission indicate a state of feeling and intention which does not coincide with his present protestations. Although he did not originate the measures, he used his official position to implement them and carry them out, and we find him guilty with respect to the Hungarian deportation program.

On 4 October 1943 Steengracht von Moyland reported on an interview he had had with the Swedish Envoy concerning Sweden's willingness to receive the children of Danish Jews. The Swedish Envoy stated that he had learned from his government that the action against the Jews in Denmark had started and

that large scale actions were being carried out in which children were bound to be included, and the Swedish Government was prepared to accept these little children; that this suggestion was made in order to limit, as far as possible, the psychological repercussions to be apprehended in view of the close connections between Sweden and Denmark.

Steengracht von Moyland stated that Sweden was not properly authorized to take care of Danish interests, and the Swedish Envoy replied that they made no such claim but that the step was taken in order to exclude everything which might possibly have a psychological effect on the public. Steengracht von Moyland states that he then sharply criticized the Swedish press and said that he could not imagine what further reactions could be possible in Sweden after the newspapers had taken such an unheard-of tone, an attitude which might force Germany to answer in an unmistakable manner.

Steengracht von Moyland's explanation is that this was the only method available to bring this matter to von Ribbentrop's attention and that his purpose was to inform the Foreign Minister of Swedish public opinion and its possible effect on German-Swedish relations. If this had been the fact, it is difficult to understand why some word or hint would not have been included to the effect that it might be to Germany's interest to accede to Sweden's desires and to improve such relations, even though Sweden was not the Protecting Power. Germany at that time was dependent on Sweden for most important raw materials, and, too, her military position was markedly on the decline.

We find it impossible to accord to this communication the objects which Steengracht von Moyland claims. The communication contains not the slightest semblance of sympathy for or any desire to accede to Sweden's wishes, or a suggestion that sound foreign policy should lead to a serious consideration of it.

Steengracht von Moyland took office on 5 May 1943, and he testifies that von Ribbentrop had told him his tasks included three things:

(1) That he must handle contacts with the diplomats in Berlin;

(2) That he must, in time, discipline the Foreign Office; and,

(3) That he must protect with ruthless energy the competency of the Foreign Office against all agencies.

He says he told von Ribbentrop that he presumed that in political aspects he would have a voice, which von Ribbentrop rejected, saying that that had been the old battle with von Weizsaecker, who always tried to interfere in politics, which were exclusively the concern of Hitler and himself, and that the Foreign Office and Steengracht von Moyland as its State Secretary would simply carry out such orders as might be received.

On 29 April 1943 von Thadden of Inland II prepared a memorandum regarding the deportation of Jews from the Southeast, and particularly in Salonika, which was approved by Steengracht von Moyland on 8 May. The memorandum states that on 29 April 1943 instructions were issued to the German Legations at Rome, Ankara, Madrid, Bern, Budapest, Sofia, and Lisbon to inform the respective governments there of the extension of general measures against the Jews in the Salonika zone, and suggesting that they be recalled by 15 June.

He recites the attempts made by the Italians to prevent these measures being taken against Jews of Italian citizenship, and those who had lost their citizenship, but who were attempting to be repatriated as Italians, and Italy demanded that it be left to Italian authorities to ascertain Italian citizenship; that Inland II considered it inadmissible to comply with the Italian request unless political reasons should necessitate it; that the Finns and Swedes were also trying to help some Jews in their endeavor to leave the German sphere of power by granting them citizenship, and the Swedes had been notified that by the end of March recently acquired citizenship would no longer be recognized. Therefore, compliance with the Italian request would establish a precedent to which other states might refer.

Inland II therefore proposed that the Italians be informed that the question of whether Jews who were presently in possession of Italian citizenship would, of course, be left to Italian authorities; but that, as a matter of principle and to avoid setting a precedent, those Jews could not be granted exemptions from the general measures against the Jews who at present did not possess Italian citizenship, even in cases where petitions for restoration of citizenship were pending.

Steengracht von Moyland, in defense, states that this is one of the first reports rendered to him and he assumes that at that time he based his action upon the decisions theretofore made, and that it was only subsequently, as he became better informed, that he attempted to take measures to alleviate this and similar situations.

This question is best resolved, however, by examining his subsequent attitude and acts.

The record contains correspondence running from early May 1943 to the end of May 1944. A proposal had been made that Rumania permit the emigration of 70,000 Jewish children up to the age of eight, to Palestine, and Marshal Antonescu asserted that he had been informed at the Fuehrer Headquarters that Germany agreed, in principle, to this emigration. Killinger, German Minister at Bucharest, requested a definite decision. Inland II stated that permitting this emigration would be con-

trary to the policy strictly adhered to, that is, not to permit Jews to emigrate from any state under German control or those of her allies; that the political department considered such emigration objectionable in view of the Arabian policy, and therefore, Inland II suggested that von Ribbentrop instruct Killinger to point out that no fundamental approval had even been given, and that it was merely intended to investigate whether this emigration of Jewish children could be approved.

The matter was also submitted to Eichmann of the RSHA who answered that this emigration of Jewish children must be opposed on principle, but if, in spite of his views, the emigration of 5,000 Jews (children) from the occupied Eastern territories was to be permitted, they should be exchanged for Germans interned abroad at the rate of four to one; that Germany did not want 20,000 old people, but those capable of reproduction and under 40 years of age, and that these negotiations must be concluded quickly since the time was approaching when, as a result "of our Jewish measures," the emigration of 5,000 Jewish children from the eastern territories would be technically impossible.

Eichmann's words "technically impossible" meant but one thing: that the unfortunate little ones shortly would be dead. In the latter part of May 1943 Swiss Minister Feldscher submitted to the head of the legal department, Albrecht, the hope of the British Government that Germany might agree to the emigration of 5,000 Jewish people, 85 percent children and 15 percent adults, from Poland, Lithuania, and Latvia to Palestine, and inquired about Germany's attitude on the emigration of Jewish children from Germany, Denmark, and the occupied territories of Holland, Belgium, Greece, and Serbia.

Wagner of Inland II stated this was obviously part of the plan reported in the press to allow 30,000 to 50,000 Jewish children to emigrate to Palestine, "thus saving them from the extermination with which they are allegedly threatened;" he further states that the Bulgarian Government had given approval for humanitarian reasons since refusal seemed impossible, but had informed the German Legation that it intended to comply with the German wish that Jewish emigration be not permitted and would frustrate the Jewish emigration by creating technical difficulties. He further refers to the Rumanian situation and to Himmler's statement that Germany could not agree to the emigration of Jewish children from the German sphere of power and from friendly states unless young, interned Germans be permitted to return to Germany at an exchange figure not yet arrived at, but suggested the ratio of one Jew to four Germans; that the legal department would be pleased if the British inquiry could be used

to resume discussions about returning interned Germans from Palestine and Australia, and to arrange for the safe conduct from the neutral territories, such as the Portuguese colonies, Argentina, etc., and perhaps for the return of Ethnic and Reich Germans from Paraguay and Uruguay.

Wagner proceeds to state that Inland II is of the opinion that the emigration of Jewish children is out of the question and, in view of Germany's Arabian policy, approval of their transfer to Palestine could not be given; and suggests that a counter-inquiry be propounded to the British as to whether its government would allow interned Germans to return under safe conduct in return for exchange of Jewish children; and if exchange negotiations occurred Germany would, at least formally, express the wish that the emigrating Jewish children be sent not to Palestine but elsewhere; that the British inquiries be answered by all of the Tripartite states in the same manner.

Von Thadden on 1 June prepared a note for an oral report on Killinger's wire that representatives of the International Red Cross had asked Antonescu whether the Rumanian Government would support the emigration of Jews from Transnistria on Red Cross ships; that Antonescu disapproved of the concentration of Jews there and absolutely wanted to get rid of them, but replied that it would be a new situation for him if the emigration would not be in Rumanian ships but those supplied by the Red Cross.

Inland II suggested that Killinger be asked to urge Rumania to prevent the emigration even if the Red Cross supplied the necessary space and that the willingness of Germany to take the unwanted Jews off Rumanian hands and put them to work in the East should be expressed.

On 27 June 1943 Sonnleithner of von Ribbentrop's office forwarded to Inland II, via Steengracht von Moyland, von Ribbentrop's request that the question of emigration of Jewish children to Argentina, together with other pending questions of emigration of Jews from Germany's sphere of power, be investigated and that suggestions be made to von Ribbentrop about the further handling of the matter.

On 25 June von Thadden prepared a memorandum which was signed by Wagner and contained a proposal, worthy of Machiavelli, whereby the emigration be prevented by imposing impossible conditions, viz, that England agree to take the Jews into England instead of Palestine, and such willingness should be evidenced by a resolution of the House of Commons; that it was to be expected that the British would not accept the demands, in which case the responsibility should lie on her shoulders, and if, contrary to expectations, she should comply, this suggestion should

be made available for propagandistic uses and would give Germany an opportunity to suggest that Jews be exchanged for interned Germans.

Inland II prepared a proposed answer to the Swiss Legation carrying out this idea and asked for comment. The political department approved Wagner's suggestion regarding the propagandistic value of the proposed reply to the Swiss Legation, but one of its divisions suggested that the phrase "in accordance with democratic, parliamentary practice" contained in the reply be omitted, as its presence would betray Germany's purpose to utilize the matter for propaganda.

Minister Ruehle of the Press and Propaganda Section of the Foreign Office offered the comment that the matter must be treated very carefully so that the propaganda offices of Germany's enemies would not be given any opportunity of making the German proposal look like a brutal attempt to blackmail or a cynical maneuver by which it was attempting to obtain indemnification for further measures against Jews under German rule, and that it must be taken into consideration that many anti-Semites abroad are having considerable misgivings about harsh treatment of the Jews; and whether it would not be wise to refrain from insisting that the Jews be taken into England, but only that they should not be transferred to Palestine or any other Arabian territory; and finally, that a more favorable impression would be given abroad if the demand for a resolution by the House of Commons was abandoned in favor of a guarantee by the British Government.

On 10 July Albrecht of the legal division pointed out that the British should be obliged not only to grant these Jews an entrance permit into England, but grant them permanent residence, and that it would not do to demand the passage of a resolution by the House of Commons because the British Government would point out that the Home Department, and not the House of Commons, was authorized to deal with the matter, as it would then appear that Germany, in order to make the plan fail, had made the request knowing it could not be complied with according to English law, and thus the propagandistic effect which the Germans desired to achieve would be jeopardized.

On 21 July von Thadden prepared a note which was signed by Wagner and went to von Ribbentrop via Steengracht von Moyland, in which the entire situation was reviewed and the views of the various divisions of the Foreign Office noted, and the technique of handling the matter prescribed. There is also the statement that "although one must count on the British Government's refusing to comply with the German demands, the Reich Leader

SS should be requested to state what barter objects might, under given circumstances, be required should they be evacuated to the eastern territories for the time being.

On 12 October Wagner submitted another memorandum regarding a renewed French inquiry concerning Germany's attitude regarding the Argentine suggestions to take over 1,000 Jewish children, comments on the situation in Rumania and Bulgaria, and requested the Foreign Minister's opinion with regard to the previous memorandum. This was submitted via Steengracht von Moyland and initialed by him.

On 28 October Wagner submitted a further memorandum which included a proposed answer to Minister Feldscher, which was the result of a discussion with Steengracht von Moyland, and, finally, von Ribbentrop determined that Feldscher should be given an oral reply and not a written one; that, although the British had not made clear what it was prepared to offer in return, the Reich was not averse to entering into negotiations, but it could not "lend itself" to permit the noble and gallant Arabs to be pushed out of Palestine and, as a condition precedent to negotiations, the British must agree to take the Jews into Great Britain and guarantee them permanent residence there.

Steengracht von Moyland took an active part in the efforts to block these plans. He wired the Legation at Bucharest to inform Marshal Antonescu that the emigration of Jews to Palestine would greatly displease the friendly Arabs; that it was expedient for the Rumanian Government to conform to the attitude of the Reich on the question of the emigration of Jews, and asked that the permission which had been granted by the Rumanian Government be rescinded.

On 29 March 1944 von Thadden reports on Feldscher's answer, which was that the children were to be taken to England but that an exchange was out of the question since the British Government was of the opinion that Germans could only be exchanged against subjects of the British Empire. He commented that the British had only declared their readiness to accept these children without making any statements concerning the length of their stay; therefore, it must be assumed that England desired only a temporary acceptance and intended to send them to Palestine later, and it must be concluded that Britain had rejected the German offer and that Feldscher should be informed orally, among other things, that Germany considers the Jews as asocial elements and since the British are interested in these asocial elements, the Reich government could imagine a third offer in the following manner: an exchange of Jews against persons not of German nationality but in whom Germany is interested, such as

Irish nationalists, Indians, Arabs, and Egyptians who were arrested in the British sphere of influence.

On 2 May 1944 Feldscher again approached the head of the legal department concerning the emigration of 5,000 Jewish children and stated that the British Government wants to receive these Jewish children within the British Empire, outside of Palestine and the Near East. Von Thadden comments that the German Government must decide whether they are ready to give up these children under any circumstances without any compensation; that Germany had demanded a reception in England, in order, should the matter be settled in a positive way, to promote anti-Semitism in England as a result of the immigration of the Jews, and the RSHA had given confidential information that *the only place where 5,000 Jewish children considered for emigration can still be found is the ghetto of Litzmannstadt, but that this ghetto would soon be liquidated under Himmler's direction.* This memorandum went to von Ribbentrop via Steengracht von Moyland.

How any one reading this correspondence and having taken part in these conferences, and particularly being aware of the passages here just referred to, could have had any doubt that the Jews, as a race, were being exterminated, is beyond our comprehension.

Finally on 27 May 1944 von Ribbentrop ordered that at present nothing further be done in the Feldscher matter.

It would be difficult to conceive of more flagrant bad faith than that which was carried out in these negotiations. Here at least is one occasion where von Ribbentrop, as Foreign Minister, asked for advice of his Foreign Office; here was the opportunity for the Foreign Office and its State Secretary to give good advice instead of bad; to point out how the improvement in German foreign relations and its rehabilitation in the eyes of the world would be possible by at least permitting children to be saved from extermination. But every step which the Foreign Office took, every recommendation that it made, was directed to block efforts made by leading countries of the world, neutral as well as enemy states, to permit little children to come unto them and to defeat the efforts of the Good Samaritans and turn their offers into Nazi propaganda.

Steengracht von Moyland was a party to this; he must bear the responsibility. He should be and is held guilty under count five.

Danish Jews.—On 1 October 1943 Best, Minister and Plenipotentiary to Denmark, telegraphed the Foreign Office, for immediate transmittal to von Ribbentrop, that the Danish Jews would be evacuated and would be arrested on the nights of the first and

second and sent to Germany. Upon receipt, this telegram was delivered to and initialed by Steengracht von Moyland. He had therefore been informed of the project.

His defense takes two courses: first, that Best, in addition to being Minister to Copenhagen, was also Reich Plenipotentiary, and in that latter capacity he was not subject to the Foreign Office and his actions against the Jews were in his capacity as Reich Plenipotentiary; and, secondly, that Best himself opposed and endeavored to prevent the deportation from taking place.

Plenipotentiary powers, when attached to those holding diplomatic positions, are not unusual. They indicate that the diplomatic representative has direct power to bind his government and that his decisions do not require approval by his department before becoming effective.

The record does not disclose, other than by the claims of the defendants involved, that Best had split official powers and divided loyalties and responsibilities. He was not a Reich commissioner, that is, one who was the responsible governing head of the territory, such, for instance, as Rosenberg in the East or Frank in the Government General, and he had neither tactical nor operational command over the Wehrmacht, but he was theoretically the highest political voice in occupied Denmark.

Whether to strengthen his own position or cloak himself against attacks made on his policy, it was he who suggested and planned and executed the deportation of the Danish Jews. He kept the Foreign Office and Steengracht von Moyland advised, and there is no objective proof that his superior, Steengracht von Moyland, disapproved or objected to the planned evacuation, notwithstanding the fact that the foreign political policy so involved was unquestionably one as to which valid and readily available objections, which might well have been apprehended and understood by Hitler, Himmler, and von Ribbentrop, clearly existed. That Best's heart was not in his work is evidenced by the fact that with his knowledge, and at least tacit consent, warnings were given by German officials to Danish governmental circles, and also to the Jews, and thus the vast majority of them escaped deportation.

Steengracht von Moyland's fault, if any, arises from the fact that it does not appear that he took any steps to prevent what was obviously a flagrant and unsupportable violation of international law. However, we are not prepared to say, in a situation as opaque as this, that he gave any affirmative support to the program, and it may be the fact that Best was acting on orders from Hitler and Himmler which Steengracht von Moyland could not overcome. This is not so unreasonable as to be rejected.

Under these circumstances, he must be given the benefit of the doubt and as to this charge we find that his guilt is not proven beyond a reasonable doubt and therefore he must be and is exonerated.

Slovakia.—In July 1943 the defendant Veesenmayer was authorized, on his next trip to Pressburg [Bratislava], to discuss with Tiso Germany's interest in the final solution for the remaining Slovakian Jews. While Steengracht von Moyland saw this document and was directed by von Ribbentrop to inform Minister Ludin about Veesenmayer's proposed trip, it does not appear that he did anything more than transmit von Ribbentrop's message to the German Minister. He did not originate, implement, execute, or otherwise further the deportation of Slovakian Jews and should be and is exonerated with respect to this incident.

Hungary.—Steengracht von Moyland had nothing to do with Veesenmayer's appointment as Minister and Reich Plenipotentiary to Hungary, nor with his early assignment to make investigations and report on the political situation there. Of course, he knew what Veesenmayer's mission was and he knew of the terrible mass deportations which took place, but Veesenmayer was acting partly under von Ribbentrop's orders and, except insofar as Steengracht von Moyland took an affirmative part in the matter, he should not be held responsible.

There is, however, at least one instance where this occurred. On 29 June 1944 Veesenmayer requested instructions as to proposals made by the Swedish, Swiss, and American Governments that certain groups of Jews be permitted to emigrate. The first, covering 400 Jews, was the Swedish request to permit their emigration either to Sweden or Palestine. There was a Swiss request involving 10,000 children plus 10 percent adults to act as escorts, and three other requests involving smaller numbers. The American War Refugee Board requested that Jewish children under 10 years of age be permitted to emigrate to Palestine. Hungary desired to accept the American proposal. Inland II recommended that Veesenmayer request the Hungarian Government to reply to the Swiss and Americans that the emigration to Palestine could not be agreed to, since Palestine was in Arabian territory and Hungary could not be a party to pushing the Arabs from their own homes. It was further suggested that such a reply would delay the matter for 2 or 3 weeks, and by that time the Jewish action—that is the completion of the deportations from Hungary —would have been finished and intervention would thus be useless.

Steengracht von Moyland saw and initialed this, yet apparently made no effort to combat this cruel and unnecessary measure. The excuse, given from time to time, of Germany's fear of dis-

pleasing the Arabs, was not made in good faith, but was a mere blind behind which the campaign of deportation, slave labor, and murder could be carried on. Swiss and Swedish proposals were made in August 1943, and again Inland II of the Foreign Office made the same recommendation which was submitted to Steengracht von Moyland, and then through him transmitted to von Ribbentrop.

Inland II was subordinated to Steengracht von Moyland. When, without comment or objection, he transmitted this to von Ribbentrop he thereby adopted these recommendations. He is responsible, therefore, for its actions which implemented the deportation and extermination of the Hungarian Jews. As to this matter, he must be and is found guilty.

Catholic Church.—That the Nazi regime early embarked on a campaign of persecution of the Catholic Church, its dignitaries, priests, nuns, and communicants is established beyond a doubt. It did not consist of isolated acts of individual citizens, but was a definite governmental plan. Its purpose so far as German Catholics were concerned was to separate the worshippers from the Church and its priests, destroy its leadership, to the end that communicants should become subservient to Nazi principles and obedient only to the commands of Hitler, as is shown by Bormann's decree of June 1940.

In the occupied territories the plan had an additional feature, namely, that of removing priests and thus depriving them of any opportunity to give any religious comfort and teaching to the peoples of those countries. A general statement of what occurred is to be found in the announcement of the Pope made in 1945 (*3268–PS, Pros. Ex. 2115*):

> "* * * there was the dissolution of Catholic organizations; the gradual suppression of the flourishing Catholic schools, both public and private; the enforced weaning of youth from family and church; the pressure brought to bear on the conscience of citizens, and especially of civil servants; the systematic defamation by means of a clever, closely-organized propaganda of the Church, the clergy, the faithful, the Church's institutions, teaching, and history; the closing, dissolution, confiscation of religious houses and other ecclesiastical institutions; the complete suppression of the Catholic press and publishing houses.
>
> "* * * the Holy See itself multiplied its representations and protests to governing authorities in Germany, reminding them in clear and energetic language of their duty to respect and fulfill the obligations of the natural law itself that were confirmed by the concordat."

A more graphic picture is found in the testimony of Father Siudzinski, a Polish priest, and of Father Thoma, a German priest. No attempt was made by the defense to question the accuracy of their testimony.

Father Siudzinski lived and performed his priestly functions at Bromberg in the Warthegau. On 2 November 1939 he was called to the regional council office where he and 30 other priests were arrested and taken to the concentration camp at Stutthof. No charges were preferred against them, and they were never told the reason for their arrest.

In April 1940 he was transferred to the concentration camp Sachsenhausen, and in December 1942 to that of Dachau. At the latter place from 1,500 to 1,600 priests were confined, of whom 850 or 860 died; during the time he was in Sachsenhausen 80 to 100 died, partly by reason of brutal treatment administered by the guards, while some 300 were exterminated in the gas chambers and the furnaces which were used for the purpose of extermination.

In 1942 throughout the 10 days of the Easter Church Holy Days they were subjected to punitive exercises, and those who were physically unable to continue this torture were beaten and many died. In these camps were Roman Catholic priests, not only from Germany and Poland, but from France, Belgium, Holland, Luxembourg, Yugoslavia, and Czechoslovakia.

Father Thoma was a German priest who, because he permitted several Polish agricultural workers to attend divine services, was arrested in 1941 and thrown into the Dachau concentration camp where there were already confined many Catholic and Protestant priests.

Early in this Party program the Poles deported to or working in the Reich were permitted to attend religious services. Later they were only permitted to occupy certain benches in the church, and finally not permitted to enter the church at all. These Poles were not voluntary workers but had been sent to the Reich and distributed all over the country.

About 2,500 priests were interned at Dachau between the date of Thoma's entrance in 1941 and the end of the war. Approximately 300 died of starvation, and the witness himself lost 65 pounds in weight; 300 more were exterminated in the gas chambers, and many priests who became old and sickly were loaded into the "Ascention" transports and never heard from again; 400 more died of diseases, deprivations, and mistreatment. At least 40 percent of the priests in the camp lost their lives. In addition to Poles and Germans, there were French, Dutch, Belgian, Luxembourg, Hungarian, Italian, Swiss, Danish, and Yugo-

slav priests. The Austrian priests were brought there as early as March 1938 and were most atrociously and abominably treated, and so terrified were they that, whenever an order came from the SS, they would suffer complete physical collapse. He was told by a Polish priest in the camp that within a few weeks of the war over 2,000 Polish priests were executed in Poland.

Even if there were no Hague Convention, we would have no question in declaring that the persecution of churches and clergy constitute a crime against humanity; but Articles 46 and 56 of the Hague Convention of 1907 [Annex to Convention No. IV], Laws and Customs of War on Land, specifically provides:

> "Family honor and the rights, the lives of persons, and private property, as well as religious convictions and practices, must be respected. Private property cannot be confiscated.
>
> * * * * * * *
>
> "The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property.
>
> "All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of arts and science, is forbidden, and should be made the subject of legal proceedings."

We hold that crimes against humanity were committed on a large scale, that they were planned and were a part of the program adopted as a matter of policy by the Third Reich.

The real question involved is whether, and if so to what extent, these defendants were a party to, aided or abetted, or took a consenting part therein, or were connected in the plans or enterprises involving their commission.

On 23 July 1938 Kerrl, Minister for Ecclesiastical Affairs, wrote the defendant Meissner that Sproll, Archbishop of Rottenburg, was the only German bishop who did not take part in the plebiscite of 10 April; that he had delivered a series of "damaging" sermons by reason of which demonstrations were made in front of his palace; and the government of Wuerttenberg concluded that the bishop could no longer remain in office, desired him to leave the Gau, and would see to it that all personal and official contacts between him and the State, Party offices, and the armed forces would be denied; that Kerrl had taken the matter up with the Foreign Office which, on 18 May, had directed the German Embassy at the Vatican to urge the Holy See to persuade the bishop to resign; that no answer had yet been received and the bishop had returned to his palace, and accordingly a great demonstration had been made against him.

In passing it may be remarked that these demonstrations were staged by the Nazi Party and were greatly resented by the people of Rottenburg.

Kerrl further stated that, if the Vatican refused to consent to the bishop's resignation, he would have to be exiled or suffer a complete boycott.

Rome did not react favorably, and the Party then organized a mob which sacked the bishop's palace and mistakenly laid violent hands on Bishop Grober who, with Bishop Sproll, was engaged in religious services in the chapel. The inhabitants of Rottenburg were quite hostile, and the governor proposed taking measures to prevent any demonstrations of loyalty to the bishop.

On 15 August Woermann reported to von Ribbentrop, via von Weizsaecker, the results of a conference had with Minister Kerrl and others regarding the matter, in which it was unanimously agreed to have the Gestapo expel the bishop from Wuerttenberg if he did not voluntarily withdraw. Woermann requested that von Ribbentrop, if he did not agree to this procedure, should confer with Kerrl.

On 27 October Woermann filed a memorandum regarding the position and functions of the Germany Embassy to the Vatican, mentioning the Sproll case, and said (*NG–4610, Pros. Ex. 2119*):

> "It has not yet been decided by what method the untenable situation resulting from the continued existence of the Reich Concordat and of the Laender Concordat, with their stipulations which are, to a large extent, unsuitable to National Socialist Germany, is to be alleviated. This problem will have to be solved sooner or later. It will involve important duties for the German Ambassador to the Vatican even though the concordats are set aside and an autonomous German solution is substituted. Had the Ambassador taken part in Mr. von Papen's negotiations in connection with the concordat it is certain that fewer concessions would have been made."

After the outbreak of the war three Polish bishops, including Cardinal Hlond, left Poland, and when the Church requested that they be permitted to be returned, Woermann informed the German Embassy at Rome that the authorities could not possibly permit any of them to return because of their anti-German attitude, or to permit them again to fulfill the position of a bishop.

The German Ambassador transmitted this message to the Vatican, which asked for reconsideration.

On 22 October 1939 von Weizsaecker wired the Ambassador to the Vatican that the return of the cardinal was out of the question even at a later date, nor could the former Nuncio Cortezi again

take up his charitable work, or Bishop Radkomsky be returned to his diocese.

On 29 November 1939 Woermann submitted to von Weizsaecker a memorandum of his conversation with the nuncio who had given information regarding atrocities in Poland. Woermann advised him not to go to high-ranking German personalities who would not perhaps listen to him as calmly as he, Woermann, had, and further informed him that as nuncio he had no official right to discuss such matters. He further stated that he had informed the nuncio that he believed the reports to be false which the latter contested by emphasizing his caution in evaluating reports, and requested Woermann to consult with von Weizsaecker.

On 11 December 1939 Bergen, German Ambassador to the Vatican, reported the criticisms being made of the German church policy and mentioned the reports of persecutions of clergymen in Poland and the prohibitions of the ceremony of the Mass and the difficulties of the churches in Poland. Von Weizsaecker received a copy.

On 6 June 1940 von Ribbentrop asked Woermann to report and thereafter confer with him on the present state of German-Vatican relations. The latter reported on 6 January that secretly "we" regard the Reich Concordat and the Laender Concordat as antiquated; that many of the fundamental principles are fundamentally opposed to the basic principles of national socialism, such as schooling and other education, and that the Laender Concordat, which conformed with the Reich Concordat, was incompatible with the German political structure, since the Laender had lost their sovereignty and both the Reich and Laender Concordats could no longer be regarded as the legal norm in domestic policy, but that an explicit declaration of "our" attitude to them had not as yet been given to the Vatican; that the reincorporated territories, such as Danzig, the Sudetenland, and the Warthegau were without a concordat, and in these areas "we" were not bound to the Vatican and "we" decline an extension of the validity of the concordat to these territories; that the Vatican has submitted the following complaints: alleged violation of the concordats, especially on the question of education; procedure on the appointment of bishops and apostolic administrators; the case of individual bishops such as Sproll; actions against the churches of Austria; compulsory evacuations; closure of church institutions; arrest of priests and members of orders; and, since the occupation of Poland, representations against the arrests and sentencing of Church dignitaries.

Woermann's final conclusions were that the upshot would probably be breaking off the concordat and regulating the legal posi-

tion of the Catholic Church in Germany, but that as long as the war continued the time was not ripe; that a certain degree of compromise, at least for the duration of the war, should be made for reasons of foreign policy and that the radical policy against the Church, particularly in Austria, should be stopped; that measures against the clergy in Poland were unavoidable because leading members of the clergy, as well as other leading personalities in the former Poland, must be eliminated, but that they could be moderated in form; that the Vatican's contribution must consist in changing the attitude of the Vatican press and refraining from encouraging Catholic clergy in Germany in their negative attitude toward national socialism, banning provocative statements by the clergy abroad, and the adoption of a different tone in the Vatican's statements, especially in connection with Poland.

On 25 January 1940 von Weizsaecker wrote Bergen concerning improving relations with the Vatican and, as his personal opinion, said "no general agreement" could be reached at present; that this applied, in particular, to all questions governed by the concordats; that proceedings against the Polish clergy could not be changed in essence, but might be brought to some kind of conclusion and that the former procedure could certainly be improved; that the only present task was to avoid creating any points of friction and gradually to improve relations by attending to certain individual complaints. He complained about the "stinging" tone used by the Vatican and its members.

On 15 February 1940, Woermann reported to von Weizsaecker regarding a conference with the Nuncio, to whom he had given information concerning the Bishops of Plock and Leslau (Wloclawek), and that he told the nuncio in a general way that, in accordance with the wishes of the Security Police and SD, the fulfillment of his wishes to have the Bishop of Leslaw restored to his position would meet with difficulties so long as Cardinal Hlond acted as Archbishop of Poland to Rome and displayed an attitude hostile to Germany.

On 4 March 1940 von Weizsaecker reported that the nuncio had spoken of the large number of priests in the Sachsenhausen concentration camp and his desire to speak and visit with them and the request that he be permitted to bring them prayerbooks and hold Mass in the camp.

On 3 July 1940 von Weizsaecker reported that the Nuncio inquired as to the reasons for imprisoning the suffragan of Lublin in a concentration camp and asked if he could not be interned elsewhere and also inquired as to the fate of the 80-year-old Bishop of Plock.

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These are examples of the complaints of the Catholic Church and of the actions of the Foreign Office with regard to them.

We have referred to the persecution of Bishop Sproll of Rottenburg. These incidents occurred in 1938. The Bishop was persecuted on both religious and political grounds. It is our opinion that the persecution of Catholics, laymen and priests, was a part and in aid of Hitler's program of aggression, as by persecutions of this kind he expected to be able to crush all resistance and to unite all Germans in an unwavering and uncritical obedience to his wishes and thereby enable him to carry out his planned aggressions freed from internal resistance.

The only connection which von Weizsaecker and Woermann had with the matter arose from the fact that the Minister of Ecclesiastical Affairs requested the Foreign Office to ask the Vatican to influence the bishop to resign. This it did, but the Vatican quite properly refused so to do, and thereupon a conference was had in the Office of the Minister for Ecclesiastical Affairs, in which Woermann took part and reported that it was the unanimous opinion of those present that if he did not resign he should be removed from his diocese by force, if necessary. This report was signed and initialed by von Weizsaecker.

It is clear, however, that the Foreign Office was neither the originator nor were they concerned as actors, aiders, or abettors in this program. It was faced with a *fait accompli.* The persecution, outrageous as it was, was started and carried out by Party leaders over whom none of the Foreign Office defendants had any control. In fact, the whole matter lay outside their official competency, and was that of the Minister for Ecclesiastical Affairs and the local authorities. It is only so far as the problem dealt with relations of Germany with the Vatican that they could speak. They could not provide protection for the bishop.

It is apparent that even those responsible for this outrage felt that they had succeeded in getting themselves in an inextricable position where they could not proceed with their plan without encountering insurmountable difficulties and where they could not afford to recant. The solution which was agreed upon, while far from being either good or wise, was perhaps the only one which, under the circumstances, was open under Nazi policy; that if the bishop did not resign he was to be requested to leave and, if necessary, removed from his diocese by force but not placed under arrest.

To this solution Woermann agreed. It would, of course, have been a preferable and more admirable thing to have condemned what had taken place and insisted that, as a matter of foreign policy, the bishop be permitted to remain in his diocese. Never-

theless, when we appreciate the realities of the situation and from what is disclosed, not only by testimony of representatives of the Vatican but from contemporaneous, official documents regarding the actual policy and the action taken by the defendants of the Foreign Office, we are convinced that at the time they did the best, perhaps the most, they could to prevent the persecution of the Church, its priests, and its communicants. It is quite true that in one or more cases Woermann suggested that the concordats were no longer practicable in view of the political situation, but he did not recommend that they be abrogated, but that such action be postponed. His recommendation evidently was approved, and the concordats remained in effect, although without question other agencies of the Nazi government paid little or no attention to their terms. That this is the fact is shown by numerous documents offered on behalf of the defendant von Weizsaecker and the affidavit of Father Gehrmann who, from 1925 to 1945, was secretary of the Apostolic Nuncio in Berlin. This is also shown by the Woermann memorandum of 22 November 1939 and his memorandum of 21 April 1942 which ended with the words (*Woermann 149, Woermann Ex. 90*):

> "For these reasons I consider it necessary that all such measures directed against the Church be suspended or discontinued until the end of the war."

See also the memorandum of du Moulin of 9 March 1939; that of von Weizsaecker of 16 August 1941; the memorandum of Woermann and Haidlen of 24 May 1939 and 4 March 1940; the Haidlen and von Weizsaecker memoranda of 10 December 1940, 17 January 1941, and 5 February 1941; the Haidlen memoranda of 11 February and 6 March 1941; and the Hoffmann memorandum with Woermann's note of 16 September 1942.

It is clear that the Foreign Office defendants were not engaged in a program of persecution, but whenever and wherever possible they sought to modify, gain as many exceptions as they could, and mitigate those which could not be changed or modified.

We must not forget that guilt is a personal matter; that men are to be judged not by theoretical, but by practical standards; that we are here to define a standard of conduct of responsibility, not only for Germans as the vanquished in war, not only with regard to past and present events, but those which in the future can be reasonably and properly applied to men and officials of every state and nation, those of the victors as well as those of the vanquished. Any other approach would make a mockery of international law and would result in wrongs quite as serious and fatal as those which were sought to be remedied.

Where, as in this case, the defendants charged were not the originators of the unlawful policy, where they had no power in themselves to change it, where they had no part in implementing it or executing it, and were both in principle and in deed against it, no conclusion of guilt may be properly reached.

The defendants von Weizsaecker and Woermann should be and are found not guilty of charges in count five relating to persecution of the Church.

There is no evidence that the defendant Steengracht von Moyland participated in the persecution of the Church, its priests, or communicants. He is therefore exonerated in that matter.

BERGER

Berger became Chief of the Main Office SS (SSHA) on 1 April 1940. In 1938 he established the Replacement Office of the General SS in the SS Main Office (SSHA). On 1 October 1939 he became chief of this replacement bureau. On 1 January 1940 the replacement office was transferred to the replacement office of the Waffen SS.

Although Berger, in his interrogations prior to trial, said he began with the SSHA on 1 January 1940, he claims that this was an error, and he actually became head of it on 1 April 1940, and we accept his statement with respect thereto.

In July 1942 he became Himmler's liaison officer for the Ministry for Eastern Territories and, although he was slated to become state secretary for that Ministry, this never materialized, but he became chief of its political directing staff. There is a dispute as to how long he held this position; he contends that he only gave it part time attention, signed no orders, and was not responsible for any dispositions made by that office.

On 1 October 1944 he was appointed Chief of Prisoner-of-War Affairs but not of the transient camps or those in operational areas or in Norway. Transient camps are those in which enemy soldiers taken prisoners are temporarily confined until they can be transferred to permanent prisoner-of-war camps in the rear. He was appointed Commander of Military Operations in Slovakia on 31 August 1944, stayed there for 2 weeks crushing the revolt which had broken out in Slovakia, was then recalled to the field command staff of Himmler and returned to Slovakia for 5 or 6 days, and was then transferred back to Berlin.

Berger's attitude toward Jews is shown in the agreement which he made, acting for Himmler, with the Minister of the Eastern Territories in March 1943 (*NO–1818, Pros. Ex. 2338*):

"The aim of this indoctrination is to convert the non-German members of the Indigenous Security Units to convinced co-fighters against bolshevism and for the all-European New Order. Special attention is to be paid to the following points:

* * * * * * *

"2. Tying up with the strong instinctive anti-Semitism of the eastern nations; the Jewish face of bolshevism; Jewry as motive power behind bolshevism, as well as the capitalism of the Western Powers; Jewish aims for world domination and the various ways toward it; world revolution and capitalism; the nationalist disguises of Jewish bolshevism; Stalin's army as a power instrument to gain Jewish world domination with the blood of other peoples * * *.

"3. The Reich's and its Fuehrer's fight against world Jewry * * *.

"4. Realization of the new European community of nations under the Reich as the leading, protecting, and marshalling power; the common work and fight of the European nations against the Jewish aims for world domination; causes, meaning, and underlying reasons of the war; *Jewry* as the instigator of the First and Second World Wars; Germany and Europe's allies in a common front in fight against Jewish-capitalist and the Jewish-Bolshevist powers; the hard necessities of the war; common work, common sacrifices, and common fight for the new Europe."

As Chief of the SS Main Office, Berger prepared and distributed "guidance pamphlets" to be used by the SS organizations. Some of them discussed anti-Semitism, both specifically and in connection with other problems. The following is a sample (*NO–2819(a), Pros. Ex. 2350; NO–2501, Pros. Ex. 2353*):

"We National Socialists believe the Fuehrer when he says that the annihilation of Jewry in Europe stands at the end of the fight instigated by the Jewish world parasite against us as his strongest enemy. But until this annihilation is completed, we must always remember that the Jew is our absolute enemy, stopping at nothing, who, with respect to us, has only one goal, our complete annihilation.

"It is our task not to Germanize the East in the old sense, that is, to bring the German language and German laws to the people living there, but to take care that only people of genuine Germanic blood are living in the East." [From the SS Main Office pamphlet, Safeguarding Europe.]

The SS also printed and published a pamphlet called "The Subhuman," from which the following is a quote (*NO–1805, Pros. Ex. 2357*):

"The subhuman, this apparently fully equal creation of nature, when seen from a biological viewpoint with hands, feet, and a sort of brain, with eyes and a mouth, nevertheless is quite different, a dreadful creature, is only an imitation of man with man-resembling features, but inferior to any animal as regards intellect and soul. In its interior, this being is a cruel chaos of wild, unrestricted passions with a nameless will to destruction, with a most primitive lust, and of unmasked depravity * * *. Now here they come again, the Huns, caricatures of human faces, nightmares that have come true, a blow in the face of everything good, allied with jungle nature and the scum of the whole world, but the suitable tools in the hand of the wandering Jew, that master of organized mass murder. Only for the dumb are they camouflaged in the dress of the bourgeois * * *. This time the Jew wanted to be fully certain. He appointed himself as officer, as commissar, as decisive leader of the subhumans * * *. The beasts in human form, the true leaders of the underworld, sowed by Ahasuerus who originates from the dark, stinking ghettos of eastern cities."

Berger asserts that he did not like this pamphlet, and that it was thrust upon him by Himmler, and that he did not father its distribution. However, on 31 March 1942 he wrote Himmler reporting a visit to Reich Party Treasurer Schwarz, where he showed him this pamphlet and asked for his support, stating that Schwarz liked it very much and said that every German family should have it, and he would support its circulation.

The following is an extract from a pamphlet prepared by the SS Main Office at Berger's orders for distribution to Wehrmacht units in the East (*NO–2818, Pros. Ex. 2349*) :

"This war is the Jewish world fight against the liberation of mankind from the spiritual and material servility (sic—servitude) of all Jewry, while on Germany's side, it has become the fight for the liberation and maintenance of mankind against all attempts of Jewish world domination.

"For us there exists only one decision: fight against bolshevism and fight against the plutocracies. Our victory over both means the annihilation of Jewry and therefore the pacification of the nations and securing a new world order."

Another example of the kind of material which was found in this ideological training material is a letter of an SS Untersturmfuehrer to his wife (*NO–4404, Pros. Ex. 3504*) :

"Together with three other soldiers I received an order tonight to shoot two members of the Red Army so that they

cannot be of danger to us any more. They were ragged and apathetic, just like animals. I give a spade to each of them, and they begin to dig their own graves, and I light a cigarette in order to calm down. There is no sound—Russians have no souls, they are animals, they became animals during the past years. They don't beg for their lives, they don't laugh, they don't cry. Three guns are pointed at them. All of a sudden one of them starts to run, but he does not get far, 20 meters, he is dead. The other does not move; he steps into his hole, and then he is dead, too. Two minutes later, the earth covers everything—we light another cigarette."

Berger admits that this is an extract from one of his pamphlets.

The witness von dem Bach-Zelewski was called by the prosecution and testified that he was a Higher SS and Police leader assigned to Russia Center in 1941, and he held that position up to 1942. Early in 1943 he became a commander of First Motorized SS Brigade and chief of the anti-partisan units. This position he held during the year 1943.

He testified to having heard Himmler's infamous Poznan speech in 1943, and that Berger was there and that [1919–PS, Prosecution] Exhibit 2368 is that speech.

With regard to the Dirlewanger unit, he testified that it was subordinated to him in 1942, and that a regiment of the brigade was assigned to him in 1944 for approximately 6 weeks; that Dirlewanger had an authorization from Himmler which made him the competent judicial officer over his men, and that there were special legal provisions in force for this one battalion, and Dirlewanger could himself pass the death sentence which other SS officers in other SS units could not do; that Dirlewanger had an identity card and a Wehrmacht pass showing that he was a member of the SS Main Office and that his competent judicial officer was Berger; that the Dirlewanger unit came to Russia fully equipped with equipment from the SS Main Office of Berger; that Dirlewanger reported to the witness whenever he went to see the Chief of the SS Main Office (Berger) and showed him the correspondence between Berger and Dirlewanger, and also reported the results of the conferences and of the arrival of shipments of equipment and supplies; that Dirlewanger was a close friend of Berger's who had procured his position; that the official connections between the two were of an intimate nature. He testifies that after the notorious Kaminsky was executed a deputy of Berger's from the SSHA came and reorganized his brigade, which was subordinate to Berger; that Dirlewanger called Berger

by his first name, which was most unusual; that the witness and other SS officers looked upon Berger as Himmler's mouthpiece, and that Berger was the power behind the throne so far as Himmler was concerned; that the Dirlewanger unit and other anti-partisan units were under the witness's tactical command; that in 1943 continual complaints were made about Dirlewanger's behavior and that Lieutenant General Schwarznecker made complaints that Dirlewanger had shot a large number of people in reprisal measures.

He states that Kube's staff preferred more serious complaints against Dirlewanger, which the witness reported to Berger. He admitted that the subordination of Dirlewanger to Berger only referred to recruiting, equipping, arming, and supplying everything that the troops needed, except munitions which they got from the Wehrmacht and that so far as combat was concerned, Berger never had anything whatsoever to do with it.

With regard to Himmler's Poznan speech, he does not think that the word "extermination" was used with regard to Jews. He testifies that the Kaminsky brigade was subordinate to the SSHA in the same manner as the Dirlewanger brigade, but that Berger was not responsible for the assignment of the brigade to Warsaw, out of which arose the affair which led to his arresting Kaminsky, having him court-martialed, and shot.

Defense witness Walter Hennings testified that Berger was the competent judicial authority for offenses against the general penal code and against the military penal code for the SS and the Waffen SS, but he was not superior to the Higher SS and Police Leaders, who had their own judicial authority, but in these matters their jurisdiction overlapped; that both before and after 1943 the SSHA chief was merely competent as judicial authority over the members of the office who were in that office, and not those located in other places, such as for instance, at the front. He admits that the Dirlewanger unit was composed not only of poachers, but also of purely criminal offenders, and if Dirlewanger had committed any atrocities it was Berger's duty to have him investigated and conduct proceedings against him.

On 10 October 1943 the RSHA issued orders that in all matters concerning "mainly the East," the Chief of the SSHA, SS Gruppenfuehrer (Lieutenant General) of the Waffen SS Berger (who was appointed by Himmler as liaison officer to the Ministry for the Eastern Territories), should receive a draft or be informed in an appropriate way.

On 17 July 1942 Berger reported to Himmler that after discussions with Gauleiter Meyer he had been promised that he, Berger, would receive all files of the Eastern Ministry for the

personal, confidential information of Himmler. It thus appears that Berger had obtained an informer in Rosenberg's confidential staff.

On 14 August 1943 Berger received from Himmler, with the request that he confidentially inform Rosenberg concerning the same, the report of Obersturmbannfuehrer Strauch of 20 July, concerning Reich Commissioner Kube who had strongly objected to Strauch's arrest of Jews employed by Kube, asserting that it was a serious violation of his jurisdiction, and that neither Himmler nor von dem Bach-Zelewski had authority to interfere with that jurisdiction, and while Kube could not by force prevent the SD from carrying out the arrests, he would, in the future, refuse to cooperate and would no longer permit the Secret Police to enter his official building. In this conference Kube called attention to the mistreatment of three White Ruthenian women in a sadistic way by SS Officer Stark who, he claimed, had unlawfully taken away a suitcase of jewels and valuables. Strauch informed Kube that he had investigated the matter and that there was no reason to instigate any proceedings against Stark who had acted on Himmler's orders; that Kube protested that Himmler had no right to order them to take any valuables away.

Strauch even complained that Kube had raised objections because expert physicians had removed, in a proper way, the gold teeth fillings from the mouths of the Jews who had been designated for special treatment, and stated that this was "unworthy of a German man of the Germany of Kant and Goethe," and that the reputation of Germany was being ruined in the whole world. Strauch virtuously objected that "we," in addition to having to perform this nasty job, "were also the targets of mud slinging." (*NO–4317, Pros. Ex. 2373.*)

The second of these reports, dated 25 July, from Strauch to von dem Bach-Zelewski regarding Kube's attitude states, namely, that the latter had displayed an absolutely impossible attitude toward the Jewish question and was hostilely disposed to the SS; that his area commissioner, Hachmann, on the same question was impossible, and he was being retained by the Gauleiter despite all warning voices; that he had complained about a Wachtmeister who had supposedly shot Jews as "swine."

Strauch proceeds to give a number of examples, and states that Kube had gone so far as to thank a Jew who, at the risk of his life, had gone into a burning garage and saved the latter's car; that when an action was planned against the Jews in Minsk Ghetto (of which Kube had been previously informed), and which was to be accomplished by telling the Council of Elders that 5,000 Jews of that area were to be resettled, Kube disclosed the actual

intention of the Secret Police, and it was an established fact that he had used his knowledge to attempt to rescue the Jews; that therefore they had to be taken by force and the use of firearms, at which point of the operation Kube appeared and overwhelmed the commander with abuse concerning the unheard-of-happenings which allegedly occurred when the Jews were herded together; that the Gauleiter used very rough language which considerably hurt the sensitive feelings of the commander; that Kube was said to have gone so far as to distribute candy to Jewish children; and that on 4 March 1942 he had threatened to accuse SS Obersturmfuehrer Burckhardt of theft because the latter had taken two typewriters from the ghetto without a regular receipt; that Kube had evidently complained to Rosenberg about mistreatment of Jews in Minsk; that, while Kube made anti-Jewish speeches, his actions belied his words and were only made with the intention to cover himself for later days.

Strauch stated that apparently Kube assured the German Jews, who had arrived at the ghetto before Strauch's time, that their lives and health would be preserved; that he had praised the works of the Jewish poet Schmueckle, and the music of Mendelssohn and Offenbach; that he had reprimanded a police officer who struck a Jew in the face who was in possession of the Iron Cross; that in the course of a large-scale action in the ghetto, it had been learned that the security service of the German Jews, consisting mainly of former participants in the war, were willing to oppose the action by force of arms, and to avoid the shedding of German blood it was explained to them that a fire had broken out in the city and they (the Jews) were needed for fire-fighting activity, and thus were loaded on trucks and given "special treatment," and when this came to Kube's ears he became excited, saying it was brutal to annihilate front-line soldiers and that the manner of execution was unheard of. This was the report of Strauch.

To a person who held the views that Berger now claims to have held, and who knew nothing of persecutions or mass murders, these reports by a leading Nazi Party man and a Gauleiter would apparently have been a shock and would have brought about investigation and action. But on 18 August Berger returned the files to Brandt, Hitler's adjutant, with the calm statement that after reporting to Rosenberg he was assured that the latter would, in the next few days, send Gauleiter Meyer to Minsk and give Kube a serious warning. The letter further stated that Rosenberg had approved Himmler's proposal that in order to settle the Latvians *en bloc* in Lettgallen [Latgalia] the former owners would be evacuated.

It is to be remembered that Berger testified that he did not know anything about plans for destroying Jews, and that he first heard of the "final solution" after his arrest and when he was in Nuernberg and Dachau. Nevertheless, as appears in his letter of 19 April 1943 to Himmler, where he discussed the formation of the proposed "European Confederation," he commented upon the Hungarian situation and stated (*NO–628, Pros. Ex. 2383*):

> "In Hungarian Government circles there exists a *well-founded fear* that the accession to the confederation will be tied up with compulsion to liquidate the Jews." [Emphasis supplied.]

In view of these documents it seems impossible to believe Berger's testimony that he knew nothing about plans to destroy Jews or that he never heard about the "final solution" until after the war.

He makes no attempt to explain [NO–4315, Prosecution] Exhibit 2375, nor why Kube, who had taken a manly stand for the protection of German Jews at least, and who had attempted to save 5,000 German Jews in the Minsk ghetto from murder, and who had indignantly denounced the treacherous slaughter of Jews who had served in the front lines for Germany, should be given a "serious warning," and this quite evidently at Berger's own suggestion. He attempts to explain the statements found in [NO–628, Prosecution] Exhibit 2383, by saying that he was merely reporting what Hungarian Government circles said and not any opinion of his own. This explanation must be rejected as well. Undoubtedly the Hungarians expressed fears that their entry into the European Confederation would be followed by compulsion to liquidate Jews, but it was Berger, the German, who was enthusiastic for this plan of confederation which would give Germany the hegemony of Europe and who further said that these Hungarian fears were "well founded."

It was his opinion and it was based on his knowledge of the plan with respect to the Jews.

Berger reported on 14 July 1943 to Himmler regarding a conference with Koch, Sauckel, Kube, Meyer, and Koerner, in which he said among other things (*NO–3370, Pros. Ex. 2376*):

> "After the partisan activity had again been broached, I rejected all accusations most strongly and once and for all stated I would not tolerate any interference with the jurisdiction of the Reich Leader SS by people who don't understand a thing, and who furthermore—and this, I said, was the saddest thing I experienced—are deceived by any atrocity tale from any savage native and would put it before the Reich East Min-

istry with suitable quotations and added frills. Koch supported me and pointed out that it was quite ridiculous to speak so much of partisans.

* * * * * * *

"In the following points I ask for a decision of the Reich Leader SS:

* * * * * * *

"3. By order of the Reich Leader SS the Jews in Minsk must either be resettled or turned over to a concentration camp. Now, Kube has in his district a large Panje cart factory with 4,000 Jews and says that he would have to close down this factory immediately if the Jews were taken away. I suggested to him to contact the Reich Leader SS via the Higher SS and Police Leader and perhaps to convert this factory into a concentration camp. This would mean, however, that he would lose them but since, as he says, only cart production is concerned, this would not mean a sacrifice for him."

On 20 August 1943 Brandt informed Berger of Himmler's answer (*NO–3304, Pros. Ex. 2377*)—

"Reference No. 3. This decision is that by order of the Reich Leader SS the Jews are to be taken out of Minsk and to Lublin or to another place. The present production can be transferred to a concentration camp."

Berger knew what that meant. As early as 28 July 1942 Himmler wrote him (*NO–626, Pros. Ex. 2378*) :

"I urgently request that no ordinance regarding the definition of the word 'Jew' be issued. We are only tying our own hands by establishing these foolish definitions. The occupied territories will be purged of Jews. The Fuehrer has charged me with the execution of this very hard order. No one can release me from this responsibility in any case, and I strongly resent all interference. You will receive memorandum from Lammers in a short time."

The Jews of Germany were being deported to the East and now the East was to be "purged" of Jews. When Himmler speaks of the Fuehrer order as being a very hard one, it takes no imagination to know what was intended—they were to be done away with. The world knows, to its horror, that the program was carried out and helpless men, women, and children by the millions were slaughtered in cold blood. While Berger was not in one of the extermination camps, he played an important part

in crushing the complaints of even highly placed officials like Kube and Rosenberg so that the ghastly scheme should proceed according to plan. He was present when Himmler delivered his Poznan speech on 4 October 1943 at a meeting of the SS Gruppenfuehrers. He there spoke of the Russian prisoners of war (*1919–PS, Pros. Ex. 2368*):

"At that time we did not value the mass of humanity as we value it today, as raw material, as labor. What, after all, thinking in terms of generations, is not to be regretted, but is now deplorable by reason of the loss of labor, is that the prisoners died in tens and hundreds of thousands of exhaustion and hunger.

* * * * * * *

"One basic principle must be the absolute rule for the SS men: We must be honest, decent, loyal, and comradely to members of our own blood and to nobody else. What happens to a Russian, to a Czech, does not interest me in the slighest. What the nations can offer in the way of good blood of our type we will take, if necessary by kidnapping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only in so far as we need them as slaves for our Kultur; otherwise, it is of no interest to me. Whether 10,000 Russian females fall down from exhaustion while digging an anti-tank ditch interests me only in so far as the anti-tank ditch for Germany is finished.

* * * * * * *

"The other side doesn't make life easy for us. And you must not forget that the fortunate position in which we are placed, by occupying large parts of Europe, carries with it also the disadvantage that in this way we have among ourselves, and thus against us, millions of people and dozens of foreign nationalities. Automatically we have against us all those who are convinced Communists; we have against us every Free Mason, every democrat, every convinced Christian. These are the ideological enemies whom we have against us all over Europe and whom the enemy has totally for himself.

* * * * * * *

"I also want to talk to you, quite frankly, on a very grave matter. Among ourselves it should be mentioned quite frankly, and yet we will never speak of it publicly. Just as we did not hesitate on 30 June 1934 to do the duty we were bidden and stand comrades who had lapsed up against the wall and shoot them, so we have never spoken about it and will never speak

of it. It was that tact which is a matter of course, and which, I am glad to say, is inherent in us, that made us never discuss it among ourselves, never speak of it. It appalled everyone, and yet everyone was certain that he would do it the next time if such orders are issued, and if it is necessary.

"I mean the evacuation of the Jews, the extermination of the Jewish race. It's one of these things which is easy to talk about. 'The Jewish race is being exterminated,' says one Party member. 'That's quite clear, it's in our program—elimination of the Jews—and we're doing it, exterminating them.' And then they come, 80,000,000 worthy Germans, and each one has his decent Jew. Of course the others are vermin, but this one is an A-1 Jew. Not one of all those who talk this way has witnessed it; not one of them has been through it. Most of you must know what it means when 100 corpses are lying side by side, or 500, or 1,000. To have stuck it out and at the same time—apart from exception caused by human weakness—to have remained decent fellows, that is what has made us hard. This is the page of glory in our history which has never been written and is never to be written * * *."

Berger was present at this meeting, he heard this speech, but he denies that anything was said about the extermination of the Jews, and in this he is corroborated by von Woyrsch. The captured phonographic text of the speech was played to Berger, and somewhat grudgingly he admitted that it sounded like Himmler's voice.

Von Woyrsch joined the SS in 1930. He states that after 1933 it was considered a combat unit against Bolshevists and Communists. He was in command of motorized police in the Polish campaign, but he denies that he was involved in cleaning out any Poles; denies that he encountered any opposition from the Polish insurgents and from the Polish Army, and that everywhere the public turned to him for help. He also denies that Himmler said anything about extermination of Jews in his Poznan speech. But if his recollection of what Himmler said in this speech is as faulty as his recollection of his own actions and those of his command in the Polish campaign, little credence can be given to his testimony.

In September 1939 Lieutenant Colonel Lahousen rendered a report of an inspection trip on 20 September 1939 to Poland. Regarding von Woyrsch he stated (*PS–3047, Pros. Ex. C–202*):

"1215–1400, Conference at Rzeszow with G–2 (IC–Maj. Dehmel); G–2 (Maj. Schmidt-Richtberg).

"Explain situation as well as military action.

"Hand LWOW for G–2 further reports about unrests in that army area arising from partly illegal measures taken by Special Purpose Group (Einsatzgruppen) of Brigadier General [Senior Colonel] (Oberfuehrer) Woyrsch (mass shootings —especially of Jews). It was annoying to the troops that young men, instead of fighting at the front, were testing their courage on defenseless people."

This was an official report made contemporaneously with the affairs which it described. There is no reason to doubt its accuracy, and shortly after it was written von Woyrsch ceased to function in command of this unit. In view of this report we are unable to give any weight to his assertion that he and the other Gruppenfuehrer would have objected if Himmler had mentioned the extermination of the Jews.

The transcript itself, which is a captured document, and the phonograph records made of the speech leave little or no doubt that it was rendered substantially in the form claimed by the prosecution.

The spontaneous corroboration of the contents of the Poznan speech was given by the witness Hildebrandt, who was himself convicted before one of these Tribunals and who received a 25-year sentence. On cross-examination he was asked about a letter written by Himmler in August 1944 in which it was proposed to make him the Higher SS and Police Leader for Transylvania, and which concluded with the comment (*Tr. p. 7042*):

"In case Hildebrandt is not there, send the most brutal man available to that region."

He admitted receiving the letter, but said (*Tr. p. 7060*):

"The letter is quite beside the point. It has no practical background and it never had any practical results. Himmler's phraseology is nothing new. I didn't get excited about it and I didn't take it seriously. *After this Poznan speech nothing could surprise me any more.*" [Emphasis supplied.]

The weight to be given the defendant Berger's assertion that the persecution of Jews was abhorrent to him can be gained from the following [Prosecution] Exhibits: 2381 and 2382 [Documents NO–2550 and NO–2408, respectively].

On 23 July 1942 Berger wrote Gruppenfuehrer Mueller of the RSHA, an organization and person for whom he now expresses great contempt, that recruiting in Hungary was purely a question of producing family allowances; that negotiations with the Hungarian Economic Office led to nothing for the time being; that the

Hungarians said that if Hitler wanted anything more he must occupy the country; that a certain Baron Collas proposed to get hold somehow of the property situated in Hungary belonging to the German Jews, which he estimated to be worth many millions pengos. Berger asked to be informed as soon as possible if this means was practicable.

On 19 August an order was issued based on a report of 13 August, but these documents were not among the captured documents.

On 24 November 1942, the Office of the Chief of Security Police and SD reported to Himmler that due to certain circumstances, it was not possible, at least in the near future, to realize pengos for Berger's purposes from this property, but that permits to emigrate could be sold to Slovakian Jews, as had been done in the case of Dutch Jews, for approximately 100,000 Swiss francs per head, and thus Berger could realize the required 30,000,000 pengos for the recruitment of volunteers for the Waffen SS in Hungary.

Berger insists that this came too late, and he obtained the necessary funds in another manner. Unfortunately, there are apparently no other records available to disclose the final history of this happy plan. But even if the suggestion came too late, the correspondence clearly discloses Berger's thoughts and intentions and dissipates his present claim that he was not imbued with any spirit of persecution.

Gabor Vanja, a former Hungarian Minister of the Interior under the Szalasi government (since executed for his own part in these matters) gave an affidavit on 28 August 1945. He deposes that on order of Szalasi he visited Himmler at his headquarters and discussed with him and Berger, who, he assumed, was to be Himmler's deputy, the deportation to Germany of the remaining Hungarian Jews.

We will discuss the sad history of these Jews in our considerations in the case of Veesenmayer.

He further deposes that Himmler ordered that the details of the evacuation be discussed the following day with Berger and Kaltenbrunner in Berlin; that this conference took place in Berlin on 16 December 1944, and Berger confirmed Himmler's request and ordered Kaltenbrunner to negotiate the details, and they were agreed upon; that Kaltenbrunner forced the immediate and energetic delivery and said that Winkelmann and Eichmann, especially the latter, would supervise the action; that Eichmann wanted to deport even the women, children, and old men from Budapest, and when Vanja protested, stated that Germany would deport the Jews herself.

There is no question but that the deportations were carried out and that the majority of these unfortunate people met their deaths in German extermination camps or in the slave-labor enterprises conducted by the SS.

Although the defendant, by reason of Vanja's execution, could not cross-examine this affiant, there is no reason to believe that his affidavit is not substantially correct. If the case against Berger rested upon the affidavit alone we would not feel justified in finding him guilty, but it is corroborated by evidence given by Berger himself, and which already establishes that he was an active party in the program of the persecution, enslavement, and murder of the Jews.

Slovakian Jews.—While the witness Kastner [Kasztner] testified that it was on Berger's recommendation to Himmler that the remaining Jews in Slovakia were deported to extermination camps, Kastner's testimony rests solely upon hearsay. The source of this hearsay, Becher, was not produced as a witness, nor any reason given for the failure to do so.

We therefore hold that this charge has not been proved beyond a reasonable doubt, and with regard to Slovakian Jews Berger must be and is exonerated.

Danish Jews.—The prosecution relies upon a letter from Keitel to the German Army Commander in Denmark, stating, among other things, that SS Obergruppenfuehrer Berger, would be in charge of the deportation of the Danish Jews. This, however, is the only evidence on this phase of the matter. Berger insists that Keitel was in error and the operation was in charge of someone else. There is no evidence other than Keitel's.

We hold that proof of guilt beyond a reasonable doubt has not been established and we exonerate Berger of guilt as to this particular charge.

Special Commando—Dirlewanger.—Dirlewanger was an old comrade of Berger's from the First World War, and while a savage and skillful fighter, was a man of unsavory character in many respects, which Berger himself admits. Dirlewanger had been convicted of sexual crimes against a minor, but Berger asserts that he was of the opinion that the conviction was the result of a personal quarrel which Dirlewanger had with one of the Nazi officials; that he obtained Dirlewanger's release and had him sent to Spain as a member of the German Condor Legion, where he fought on behalf of Franco; that on his return he succeeded in having Dirlewanger reinstated in the SS as Obersturmbannfuehrer.

It was Berger's idea that for partisan fighting in the East, a battalion of poachers be organized. Himmler approved this sug-

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gestion and Berger's recommendation that Dirlewanger train and command this battalion.

It was assigned to the East and immediately started on a career of savagery, plunder, and corruption, which brought it to the unfavorable attention of German officials who had an opportunity to learn of its conduct.

The prosecution called Konrad Morgen, who had been conscripted into the SS, and in October 1940 sent to the SS Main Court as a judge. He was with the SS Police Court VI at Krakow; in May 1942 was relieved of his duties and demoted because of an acquittal he had granted and sent to the front as an ordinary soldier; he was recalled to the police courts in June 1942 and was in charge of investigations at concentration camps. In passing, it may be stated that it was he who was originally responsible for the investigation, trial, and subsequent execution of the notorious Koch who was commandant of the Buchenwald concentration camp.

As judge, his task was to investigate and prepare criminal cases and, when not in charge of investigations, he acted as presiding judge. His jurisdiction covered all members of the Waffen SS and police troops on active duty, but not members of the Wehrmacht.

In the beginning of 1942 he noticed that there had been many convictions of the members of the Dirlewanger unit for plundering and mistreatment of the civilian population. He discovered that all the members of this battalion had been previously convicted of offenses. There were also complaints against Dirlewanger. This unit was not a part of the Waffen SS but was a supplementary police unit. At that time it consisted purely of poachers with previous convictions, but later on inmates of concentration camps and other criminals were transferred to the unit. It finally reached the strength of a division.

His investigation at Lublin among German agencies and the Security Police revealed that this unit was a pest and a terror to the population; that Dirlewanger on repeated occasions plundered the ghettos in Lublin, would arrest Jews on the charge of ritual murder, exact blackmail up to 15,000 zlotys, and if the money was not forthcoming have the victim shot. It was charged that he arrested young Jewesses, called in a small circle of friends, stripped the women of their clothes, beat them, and finally gave them an injection of strychnine and watched them die; that the testimony concerning these incidents was obtained by witnesses and the criminal police.

The witness deemed it urgent to arrest Dirlewanger and to investigate these frightful crimes. He reported to Obergruppen-

fuehrer Krueger at Krakow and asked for an order of arrest. Krueger reported that there was nothing he could do because he was not competent and that the detachment was subordinate exclusively to the orders of Berger. Krueger immediately phoned Berger at Berlin, and after denouncing Dirlewanger, informed Berger that unless "this bunch of criminals disappeared from the Government General within a week I will go myself and lock them up." Berger finally promised to do everything he could, and in approximately 2 weeks the unit was transferred but not, as the witness thought, to the Reich and Dirlewanger punished, but to his surprise, it was sent to Central Russia, to Mogilev. However, the witness sent the files with the report to the commander and the supreme judicial authority concerned, but nothing was done and Dirlewanger was promoted.

While Berger violently attacks the testimony and credibility of the witness, nevertheless his own report to Himmler of 22 June 1942 corroborates it in part (*NO–2455, Pros. Ex. 2391*):

> "Now it is peculiar that the surprise attacks by partisans started all of a sudden when Dr. Dirlewanger's Sonderkommando was removed from the district by more or less fair means.
>
> "Perhaps this is also now a warning that a savage country cannot be governed in a 'decent manner' and that the Sonderkommando's policy 'to rather shoot two Poles too many than one too few' was right.
>
> "Considering the weakness of this commando and referring to the following data, I request permission to again comb the penal institutions in close collaboration with SS Gruppenfuehrer Mueller, and after thoroughly examining them, to train all men sentenced for poaching and to use them for reinforcing the old Sonderkommando, and for forming a new second one."

It was the practice of the Dirlewanger brigade to seize villages, shut the inhabitants in barns, set them afire, and shoot down the living torches when they tried to escape, and to clear roads of mines with serried ranks of peasants who would walk down the roads, thus exploding the mines with the result that thousands were thus blown to pieces.

On 23 June 1943 von dem Bach-Zelewski rendered an official report on Operation Cottbus, in which he stated that two to three thousand local people lost their lives in cleaning up mines, 3,709 were liquidated, and 599 wounded; 4,900 men and 600 women were assigned for labor, with German losses of only 83 killed, and 473 wounded, and non-German auxiliary losses of 39 killed, 152 wounded, and 14 missing.

The disproportion in losses between the partisans and the German troops indicates not warfare but massacre.

Further corroboration as to the true nature of Dirlewanger's activities can be seen from the recitation of his merits when, in August 1943 he was awarded the German Cross of Gold; that his battalion had wiped out 15,000 guerrillas at a loss to itself of 92 dead, 218 wounded, and 8 missing.

In July 1943 defense witness Braeutigam submitted to Berger a series of reports of murder and outrages committed against the helpless inhabitants of White Ruthenia which, as the Reich Commissioner for that territory stated, "supplies the answer to the puzzle why even after large-scale operations the number of partisans would not decrease, but actually increase, and why food supplies for the home front and the front line from the embattled areas grew scantier instead of going up. Furthermore, reports show that any propaganda moves after such operations have ended, operations which are terminated by mass shootings of the entire population, are completely useless," and "if the treatment of the indigenous population in the occupied eastern territories is continued in the same manner which has been used up to now, not only by the police but also by the OT (Organization Todt), then in the coming winter we may expect not partisans but the revolt of the whole country. * * * The regiment Dirlewanger is particularly prominent in that type of operation. It is composed almost exclusively of previously convicted criminals of Germany."

Berger's reaction is shown by his letter of 13 July 1943, where he says (*NO–3028, Pros. Ex. 2392*):

> "I deeply regret that reports of this sort are being relayed unchecked, that much confusion is being stirred up, and above all things, that the confidence in close cooperation is being destroyed. In the case at hand it is my opinion that it would have been the duty of Commissioner General Kube to ascertain the accuracy of the reports to his satisfaction on the spot and then to get in touch with the competent SS and Police Leader, SS Brigadefuehrer von Gottberg, or with the chief in charge of fighting partisans, SS Obergruppenfuehrer von dem Bach [-Zelewski]. We can alter nothing here in any case, for you cannot give orders to a troop without personally having exact insight into the situation. Moreover, perhaps Mr. Kube's attention can still be called to the fact that for the most part these 'criminals' are former Party members who were formerly punished for poaching, or for some stupid action, are now taken out and allowed to prove themselves, and this they do with an incredible percentage of bloody losses."

On 16 July 1943 Berger received an order from Himmler to inform the Reich Minister for the East [eastern occupied territories] that the campaign against the partisans was going quite according to schedule and Volhynia and Podolia would be the next on the list.

On 4 May 1944 Berger wrote Brandt, head of Himmler's personal staff (*NO–5884, Pros. Ex. 2396*):

> "In the case of the Dirlewanger regiment and the whipping scene at Minsk, a letter from Reichsleiter Rosenberg was sent to the Reich Leader SS. Since the Reich Leader SS has not yet approached me on this subject I assume that you have kept this letter back for the time being. Like other letters, it did not go through my hands, *or I would have changed it.*" (Italics ours.)
>
> "As is well known, there are a number of people in the East Ministry who do not want to act as I do and are pleased when conflicts arise. Kindly suggest to the Reich Leader SS to address the following or a similar letter to Reichsleiter Rosenberg:
>
> " 'Dear Party Member Rosenberg:
>
> " 'On principle I share your view, and I am not at all pleased when an incident such as one in Minsk occurs. However, I am convinced that you can fully understand it if I cannot at present involve SS Standartenfuehrer Dr. Dirlewanger in an investigation, as I need him most badly for the safeguarding of that area'."

The manner in which these operations against partisans were conducted is clearly disclosed by [NO–1128, Prosecution] Exhibit 2370, in which it appears that in the 4-month period of August, September, October, and November 1942, 1,337 bandits were counted dead after engagements, 737 prisoners immediately executed, 7,828 executed after questioning; and that of accomplices and guerrilla suspects, 14,257 were executed, and *363,211 Jews were executed.*

Berger's personal interest and sense of proprietorship in Dirlewanger and his brigade is shown by his communication of 19 October 1943, wherein he stated (*NO–621, Pros. Ex. 2394*):

> "This change of opinion is probably due to the unqualified conduct of my special unit Dr. Dirlewanger who, so far as I can ascertain, has behaved in a most unsatisfactory manner in every respect."

While in the field the unit was not under his tactical direction, it was organized by him, trained by the man whom he selected, the idea was his, he kept it and its commander under his protec-

tion, he was repeatedly informed of its savage and uncivilized behavior, which he not only permitted to continue, but attempted to justify; he fought every effort to have it transferred or dispersed, recommended its commander for promotion and covered him with the mantle of his protection. That one of the purposes for which the brigade was organized was to commit crimes against humanity, and that it did so to an extent which horrified and shocked even Nazi commissioners and Rosenberg's Ministry for the Eastern Territories, who can hardly be justly accused of leniency toward the Jews, and people of the eastern territories, is shown beyond a doubt. Berger's responsibility is quite as clear.

He is guilty with respect to the matters charged against him regarding the actions of the Dirlewanger unit, and we so find.

Special treatment of foreign nationals.—The term "special treatment" had a well-recognized meaning in Nazi Germany. It meant execution or at best confinement in a concentration camp, the latter being, in most instances, the substitution of a lingering death for a quick one. We will consider what, if any, part Berger and the SSHA played in the treatment of foreign nationals.

Himmler was infected with the idea that German blood must not be contaminated by being mingled with that of what he termed to be inferior peoples, and that those who violated his decree on this subject should and would be subject to "special treatment" unless it was shown that they were of suitable Aryan groups or outstanding individuals whose blood might be valuable to Germany.

Hildebrandt, one of Berger's witnesses and head of the SS Race and Settlement Main Office, having engaged in one of the usual jurisdictional disputes with the head of the Security Police office, reached an agreement, under the date of 20 August 1943, that the task of negatively eliminating the undesirables was that of the Security Police and that of selecting those racially qualified belonged to the Race and Settlement Main Office (RuSHA).

The prosecution alleges that examiners of Berger's SS Main Office undertook to make racial examinations in cases of this kind and that he bears criminal responsibility therefor. That these examiners made such examinations is established by the evidence, but there is serious doubt whether Berger or his main office are responsible for their actions. The examiners were detailed to Berger by the RuSHA to conduct physical examinations of recruits for the Waffen SS. The weight of the evidence is, however, that in making the so-called racial examination, these men were not subject to Berger's control, but to that of the bureau from which they were detailed. We have no doubt that Berger's office knew of the latter activity, but there is a reasonable doubt that

when acting in that capacity he had jurisdiction over them. Therefore, we find him not guilty with respect thereto.

Recruiting of concentration camp guards.—It is unnecessary for us to elaborate what has long since been established regarding German concentration camps. They were conceived in sin and born in iniquity, and the subsequent consequences were the natural result of both their parentage and environment.

Although it is claimed they were first used for the imprisonment of Communists and convicted criminals, it is clear beyond question that from the beginning they were utilized for the imprisonment of those who disagreed with Nazi policy or became the objects of Nazi persecution. In time their inmates included those persecuted for religious beliefs, such as Catholic priests, Protestant pastors, as well as political opponents, Jews, and foreigners who rebelled against their lot or who transgressed against the cruel conditions under which they were compelled to work. Peoples of every country who fell under German domination and control were numbered among the victims of this system. It is one of the main insignia of German terrorism. Although in this case every defendant disclaims knowledge of what actually went on in them, each looked upon them as places of horror from which he sought to protect those in whom he had an interest.

After the outbreak of the war and during its progress they were the means of terror used to keep both German and other populations under control.

Berger does not deny that he and his agency recruited the guards of these camps at least until 1942. Many of these guards were recruited from the SS. There are strong indications that this was likewise true as late as 1944, but it is immaterial whether his activities ended in 1942 or continued thereafter. His defense is that his recruits were only used as exterior guards and had nothing to do with what went on in the interior of the camps.

The evidence shows that among the records in this case there are exhibits showing he furnished guards for Buchenwald, Auschwitz, and Oranienburg, and for camps holding Jews working as slave laborers for Organization Todt.

Berger claims that it seems incredible that a man holding the high rank in the SS that he did not know of the atrocities committed in these camps, but that nevertheless he did not know. We do not believe him. His close official and personal relations with Himmler, the high positions which he held under Himmler, the fact that he was present and heard Himmler's Poznan speech, preclude the claim of ignorance which he now makes.

Nor are we impressed with the defense that these recruits were used for exterior guard duty only, and therefore were not respon-

sible for the atrocities committed within the camps. On direct examination he testified (*Tr. p. 6170*):

> "Q. Now, of course, it may be possible to say 'all right', but still there is a possibility that these guards took part in the maltreatment of inmates which were perpetrated outside the concentration camp.
>
> "A. The innumerable Dachau trials prove that such things did actually occur. But let me continue. It was only the most insignificant part of these atrocities that were committed by members of the SS. That was done by people whom I had assigned to that job at one time or another, but over 90 percent was perpetrated by the so-called members of the Landesschuetzen Battalions who were assigned after 1942 by Pohl from the army, from the Luftwaffe, and the navy, for guard purposes in the camps."

If we are to assume that his statements were true, nevertheless he is not thereby relieved of responsibility. These camps were an integral part of the Nazi program of oppression, slave labor, terrorism, and extermination. They were the means whereby the Nazi Party maintained its power over the German people and over the peoples of nations occupied or controlled by it. To maintain and administer them obviously required both interior and exterior guards. The defendant furnished the exterior guards and if, as we find to be the fact, these camps were of the character just described and the defendant knew of it, which we also find to be the fact, he participated in the crime.

The fact, if it be a fact, that neither he nor the guards participated in shootings, beatings, starvations, and other maltreatment can only be considered, if at all, in mitigation of the offense. We find the defendant Berger guilty of the crimes against humanity as a conscious participant in the concentration camp program.

Conscription of nationals of other countries.—Berger, in 1938, set up the recruiting office of the Waffen SS and on 1 July 1939 he became the official chief of that office, a position which he retained until 31 December 1939. Upon the reorganization of the SS Main Office on 1 January 1940 he became its chief and was thereafter responsible for the recruitment of the Waffen SS until the close of the war.

In the early part of the war there were undoubtedly a large number of foreign volunteers to the Waffen SS. Such recruitment is, of course, perfectly legal. The prosecution alleged, however, that during the war large numbers of foreign nationals were conscripted into the Waffen SS contrary to the principles of international law, and that these crimes constitute a crime

against humanity. If, as has been often held, it is a crime to conscript foreign nationals to slave labor, it is a crime of equal rank to conscript them into the army to fight, bleed, and die.

As the war progressed Germany suffered severe losses of manpower. It adopted conscription as to its own nationals and in many instances of foreign nationals living within its borders. We hold that it is not illegal to recruit prisoners of war who volunteer to fight against their own country, but pressure or coercion to compel such persons to enter into the armed services obviously violates international law.

On 24 January 1945 Berger, as Commander of the Reserve Army [Chief of Staff of the Volkssturm] and Chief of Prisoner-of-War Affairs, issued an order which, after reciting that many applications had been received from Russian prisoners of war to join General Wlassow's army of liberation, added that as a result negative elements among the Russian prisoners had become more active; that in order to remove these unfavorable influences and to insure the success of further recruiting, it was ordered that prisoners of war who were known to be ringleaders for subversive propaganda were to be immediately removed from the labor unit and transferred to the SD, and those subversive elements who were not active ringleaders were to be listed for removal at a moment's notice; that the isolation of these subversive elements was not possible at the time because of the work to be done.

It is unnecessary to again explain what was meant by "transfer to the SD." In most instances it meant death. Such an order clearly violates the rules of war, and that its issuance had a marked stimulation of recruitment of Russian prisoners of war requires no proof. The safe way to avoid being classified as an active or positive subversive element would be to volunteer. A prisoner of war who endeavored to persuade his comrades not to fight against his brothers thereby violated no rule of war and such conduct would, under no possibility, subject him to legal punishment, or would justify his being turned over to the SD.

That these measures were effective and that in many cases the so-called Russian "volunteers" were in fact conscripted, is clear. Fegelein reported to Himmler, apparently in February 1945, that the volunteers "had stated that they would on no account fight against their compatriots." (*NO–1720, Pros. Ex. C–209.*) His report further stated:

"2. A large number had already deserted to the other side.

"3. Several members of the German leader personnel had already been killed by the volunteers, and finally that the leader

personnel are afraid of being killed by the volunteers in contact with the enemy and are anxious as to how they can get away."

While we do not overlook the possibility that Russian prisoners of war may have volunteered with the express intention of deserting at the earliest practicable moment, nevertheless when Fegelein's report is considered in connection with Berger's order above referred to, the conclusion is inescapable that more than ordinary persuasion was used by Berger's office to induce Russian prisoners of war to enter the Wlassow Army of Liberation.

On 8 September 1944 Greiser wrote Himmler relative to the conscription of all able-bodied Germans from Russia, including those not yet naturalized, and asked that certain exemptions be granted covering certain organizations of his own. He stated that Berger, some months previously, had agreed to this reservation. The persons thus to be considered were not German nationals but were people of German blood who were citizens of Russia. The action was wholly without sanction of law and in patent violation of international law.

On 16 June 1943 Berger wrote Brandt, Himmler's adjutant, with regard to recruitment of the Prinz Eugen Division in Croatia (*NO–5901, Pros. Ex. 3272*):

"The Reich Leader SS has proclaimed general compulsory military service for the ethnic group in the Serbian territory, that is, Dr. Janko. The Serbian territory is under German sovereignty, since it is occupied by Germany. From the point of public law there can be no objection, leaving apart the question that really nobody cares what we do down there with our ethnic Germans.

* * * * * * *

"To proclaim compulsory service for Croatia and Serbia is impossible under public law. And it is not at all necessary either, for when an ethnic group is under moderately good leadership, everybody volunteers, and those who do not volunteer get their houses broken to pieces. (Such cases have occurred in the Rumanian Banat during the last few days.)"

The SS Legal Main Office, on 12 January 1943, wrote to Berger's Main Office that the Prinz Eugen Division was no longer an organization of volunteers, but that on the contrary, the ethnic Germans from the Serbian Banat were drafted, to a large extent, under threat of punishment by the local German leadership, and later by the replacement agencies (Berger's).

Kasche of the Foreign Office, in his report of 25 June 1943, likewise complained of the ruthless recruiting methods used in Croatia.

The defense that these measures were taken under agreement between Germany and the sovereign state of Croatia is without merit. Croatia was a puppet created by Germany, existed under and only so long as it was backed up by German arms. It was neither sovereign nor a state. The so-called internal agreements were suggested and imposed by Germany and accepted by Croatia because it was without power to do anything else, and its government existed only when backed up by German bayonets. Nor is there any substance to the contention that those drafted and conscripted were ethnic Germans and therefore subject to German law of conscription. The German Government had no more jurisdiction over ethnic Germans in Europe than it had over ethnic Germans in the United States. They are not German nationals, but citizens of their respective nations.

Under the Himmler decree (*R–112, Pros. Ex. 1355*)—

> "* * * persons of Germanic origin who do not apply for * * * repatriation are to be turned over to the German State Police, and if they do not change their minds within 8 days are taken into protective custody for transfer into concentration camps."

An act of naturalization under such circumstances is not voluntary.

The program carried out in Serbia, Croatia, and the Protectorate was likewise carried out in Latvia, Lithuania, Poland, Russia, Luxembourg, Alsace, and Lorraine. Beyond question of doubt, the defendant Berger is guilty of a crime against humanity when he and his agencies took part in a program which subjected citizens of those countries, by forced Germanization or other ways, to be conscripted into the German armed forces.

The defense has attempted to picture Berger as a man of humane and kindly instincts, averse to persecutions of any kind. But this picture fades in the face of a letter found in the Party files in Stuttgart, written on 4 May 1933. This was after the seizure of power, and he said (*NO–5915, Pros. Ex. 3489*) :

> "The special commissioners [SonderKommissare] are to be instructed that they now have to discontinue arrests and that applications for release are to be considered favorably. A balance has to remain on the Heuberg. Everything unnecessary only eats up our money, and we will afterward have nothing left for the training. Let them out, and if they resist shoot them down. A much simpler solution and one which is more favorable to us.

It would be hard to conceive of a more callous and brutal policy aimed at that time, apparently, to save SA funds so that they

could be used for training purposes. Berger explains that he does not remember or recognize the letter, but it came from the Wuerttemberg Party files of Stuttgart, and it bears the typed signature "Chief of Branch Group Wuerttemburg," signed, "G. BERGER, Oberfuehrer."

We have no doubt as to its genuineness, and it is significant to note that he does not deny that he wrote it.

We find the defendant Berger guilty under count five of the indictment.

During the concluding months of the war, the record shows that the defendant Berger was the means of saving the lives of American, British, and Allied officers and men whose safety was gravely imperiled by orders of Hitler that they be liquidated or held as hostages. Berger disobeyed orders and intervened on their behalf, and in so doing placed himself in a position of hazard. These are matters of extenuation which the Tribunal will take into consideration in fixing his sentence.

BOHLE

The defendant Ernst Wilhelm Bohle joined the Nazi Party on 1 March 1932, received the Golden Party Badge in 1937, and also received the Golden Hitler Youth Badge. On 8 May 1933, he became chief of the Party's Auslands Organization (AO) which had jurisdiction over German nationals living outside Germany. He held this latter office until 1 May 1945. Bohle became the Gauleiter of the AO in October 1933. On 30 January 1937 Bohle became chief of AO in the Foreign Office, and in December of that year he received the rank of State Secretary. He remained in the Foreign Office until 14 November 1941, but kept his title without pay until the collapse.

Bohle was a protege of Hess, or at least was looked upon as such, and when the latter fled to England in 1941 Bohle fell from power and was relieved of his duty and responsibility in the Foreign Office.

Although a Gauleiter, he had no governmental powers over any territory, but his organization was the sole agency competent for the entire activity of the Party abroad, insofar as German nationals residing abroad were concerned, and he had the same jurisdiction over them as the Gauleiters, in their territorial sovereignty had over the populations of their territories or Gaue.

In October 1940 the Foreign Office received a telegram from Abetz, German Ambassador to the Vichy government, in which he suggested a collective expatriation procedure for Jews in the occupied portions of France as shown by lists made in an agree-

ment by Abetz with the high Party leaders. This proposed procedure included Austrian Jews who had not changed their Austrian passports for German passports before 31 December 1938 and Reich German Jews who had not registered before 3 February 1938. Bohle was on the distribution list, but our attention has not been directed to any document or other evidence indicating whether he or any of his representatives were among the "high Party leaders" to whom Abetz made reference.

In attempting to connect Bohle with the offenses charged in count five, the prosecution relies on Bohle's speech on 7 or 8 November 1938 on the occasion of the funeral services of von Rath, a Foreign Office official attached to the German Embassy in Paris, assassinated by Gruenspan, a Jew, in which Bohle speaks of von Rath as the eighth victim of Jewish-Bolshevist murder schemes and that the Jew wanted, according to Gruenspan's testimony, to hit Germany. But we find nothing in this speech sufficiently concrete and explicit to connect Bohle with any of the offenses charged in count five.

In the early part of 1937 and continuously at least until March 1938 the defendant Bohle and the AO urged the cancellation of the [informal, so-called] Haavara [transfer] agreement by which Jews desiring to emigrate to Palestine, or who had emigrated to that land, were enabled to realize their German assets, in whole or in part, by making purchases of German commodities for shipment there, and having the amount thereof charged against their blocked credits in the Reich. After much correspondence and several conferences, and after considerable opposition from other departments or sections in the Foreign Office and from the Ministry of Economics, apparently they succeeded. The object, however, was not to prevent the emigration of Jews, but to prevent their emigrating to Palestine and setting up a Jewish state there, and that by these transactions German commodities were transported without Germany receiving foreign exchange in return, and third, that thereby Jews were being enabled to take their assets out of the country.

We are unable to see, however, that these transactions which started in 1937, and were concluded about March 1938, were so connected with the aggressive war and crimes against peace as to render it reasonably certain that the measures had this in view. It is, of course, a part of the unholy program of oppression of the Jews by the Nazi Party, but however much such measures may shock one's moral sense, it is not an offense which comes within the jurisdiction of the Court unless the proof clearly shows that it was connected with crimes against peace. That link is missing.

In August 1943 the AO endeavored to compel the discharge of Jews employed in Rumania by German firms, but this took place long after Bohle's activity in public office.

The prosecution asserts that the Foreign Office correspondence regarding its plans to have Bohle testify in the Gruenspan trial indicates Bohle's criminal responsibility under count five. The trial never took place; of course, Bohle did not testify; and such facts do not constitute a basis for conviction.

In support of its contention that Bohle was a guilty participant in the so-called resettlement of Germans on lands confiscated from Poles and Jews in the incorporated eastern territories and Government General, the prosecution cites Himmler's decree which implemented Hitler's decree of 7 October 1939, by which he was constituted Reich Commissioner of Germandom. The Himmler decree charged the AO and VoMi with the task of bringing in the Germans and the ethnic Germans for purposes of resettlement. Various other duties were assigned to other departments and agencies of the Reich.

The defendant Keppler appointed one George Christians, one of Bohle's subordinates, as a member of the Aufsichtsrat of the DUT (German Resettlement Trusteeship, Ltd., Liability Company), which nomination was approved by Himmler. Christians thereafter acted in that capacity. But here the evidence stops. There is no evidence that Christians in this capacity acted for Bohle and no evidence of Christians' activity in the DUT. The DUT was a part of the infamous plot for depriving Poles and Jews of their property and turning it over for resettlement to Reich and ethnic Germans. However, our attention has not been called to, and we have been unable to find, any evidence that Bohle's organization took any part in the so-called Germanization or resettlement program. He must therefore be exonerated with respect to this phase of the case.

Bohle's acts and those of his department in persuading German business firms to discharge Jewish employees working for them abroad, while reprehensible from a moral standpoint, do not come within the scope of either count five of the indictment or of the crimes defined by the London Charter and Control Council Law No. 10. The same is true with respect to his efforts to have the Haavara Agreement abrogated.

We therefore acquit him under count five.

DARRÉ

Darré as early as August 1930 became Hitler's adviser on agricultural questions. He became a member of the Party in the same

year and of the SS in 1931, and was a Reichsleiter for Agrarian Policy from 1933 until he was deprived of official functions in 1942. He was a member of the SS and became a Sturmbannfuehrer and through intermediate promotions rose to the grade of Obergruppenfuehrer in November 1934. He was elected to the Reichstag in 1932 and was Reich Minister for Food and Agriculture, and Reich Peasant Leader from 1933 to 1945, but was relieved of his duties from 12 May 1942. He was Chief of the Race and Settlement Office from 1931 to 1938 and received the Golden Party Badge in 1936. He also held other offices, all of which were connected with agricultural affairs. He had interested himself in problems of agriculture, hereditary land ownership, and "blood and soil," which activities probably first attracted Hitler's attention, and he [Hitler] utilized Darré in the Party's drive to interest farmers and agricultural workers in the Nazi Party.

Some of his ideas were novel and somewhat bizarre, but it is not a crime to evolve and advocate new or even unsound social and economic theories. This Tribunal is only interested in what he did and what he advocated which comes within the scope of the indictment, the London Charter, and Control Council Law No. 10.

Anti-Semitism.—A careful examination of Darré's speeches found largely in [Document] books 102 and 103, reveal a strong anti-Jewish feeling. His statements are intolerant, prejudiced, and disclose a profound ignorance of history, economics, and religious philosophy. Thus, for example, is his theory that the foundations of democratic government are solely the product of Semitic philosophy which, of course, altogether overlooks the fact that one of the earliest forms of complete democracy was the political organization of the early Germanic tribes where the chief was elected by the members of the tribe, held office only so long as the tribe or council approved of his actions, whose office was not hereditary, and where the laws were enacted not by him but by the tribal council—all of this before the Germanic tribes had been converted to Christianity and in a country where a Jew was as unknown as the dodo.

Darré's speeches attack the Jews and democracy, but he also attacked the Prussians and Prussianism. But this is a phenomenon known to all societies and nations. Individuals and groups are prone to blame ills in the body politic and economy to groups—bankers, capitalists, labor unions, conservatives and radicals—all depending upon the individual point of view. Such criticism is often the result of ignorance and instability; but, except in an authoritarian state, it has not yet been suggested, as a matter of law, that to hold and express such views is criminal.

It is true that in one of his speeches he expressed approval of the Nuernberg Laws, but a fair perusal of his speeches and written articles reveals that they seek to glorify the peasant and agriculture and, as window dressing, refer to Prussians, Jews, and Jewish ideas. We do not find in them any attempt to incite or justify murder, or exterminations, and believe they are the expressions of one obsessed with an *idée fixe.*

Utilization of Jewish agricultural property.—The prosecution rely upon the decree of 26 April 1938 requiring all Jews to register their property, which was signed by Goering as Plenipotentiary for the Four Year Plan and Frick as Minister of the Interior, and the decree of 3 December 1938, signed by Funk and Frick of the Ministries of Economy and the Interior, concerning the utilization of Jewish property.

One of the provisions of the last-named decree provided that a Jew may be ordered to sell his agricultural or forest enterprises or properties in whole or in part within a definite time.

On 23 December 1938 Willikens, as Darré's deputy, issued a decree implementing the decree of 3 December 1938 which provided, among other things, that the price to be paid to Jews for their agricultural property should not exceed the settlement utilization value, and even if the property is not used for settlement, the Jew is only to receive from the purchaser the price corresponding to the so-called settlement utilization value. In such a case in accordance with section 15, paragraph 1 of the decree, the buyer was required to pay over to the Reich the difference between the settlement utilization value and the adequate market value. It recommended that, in administration, trustees be appointed in all cases where difficulties were expected to arise and that they could be appointed as soon as the Jew had received his notification without waiting for the result thereof. It further provided that in all cases where 65 hectares [1 hectare = 2.471 acres] or more of land was thus to be sold, Darré was to be informed prior to the sale.

This program was carried out under Darré's orders by agencies organized and controlled by him. For instance, on 16 February 1939 the Bavarian Ministry of Economy, Department of Agriculture, issued a decree implementing Darré's decree, and the report of the Bavarian Peasant Settlement Company, Ltd., of 12 December 1940 discloses that in Franconia the agricultural property of 276 Jews, amounting to 606,345 hectares (approximately 1,500,000 acres) had been thus Aryanized.

It is clear from the first of the decrees that it was intended not only to bar Jews from agriculture, but also to rob them of a large part of the value of their property. These decrees were enacted

at about the same time as the infamous Crystal Week and the levy of a billion mark fine against Jews for alleged complicity in the assassination of von Rath.

Unquestionably the proceeds of the Aryanization of farms and other Jewish property were in aid of and utilized in the program of rearmament and subsequent aggression.

An instance of how the law was administered is detailed by Justin Steinhauser, a Jewish cattle dealer and farmer. On 8 March 1939 he received an order to sell his farm buildings, inventory, and livestock, at a price of 10,400 RM; he was told, in this order, that noncompliance would be punished, and that if he did not obey the order a trustee would be appointed to bring about a sale to the Bavarian Peasant Settlement Company, Ltd., permission to sell elsewhere was denied. Five thousand two hundred seventy-five RM of the purchase price was deducted as his share of the billion mark fine, and after minor property deductions, the net of 4,418.20 RM was placed in a blocked account to be disposed of only with the permission of the Finance President of the Foreign Exchange Office, Nuernberg. He was permitted to draw from this balance 300 RM per month. The property was, at the time of the sale, insured by the Bavarian State Insurance Administration for 23,230 RM, and without doubt, the enforced purchase price was less than half of what the property was actually worth.

At the time these decrees were issued and while they were being enforced, Darré was Minister of Food and Agriculture, and while he may never have originated the plan to thus rob German Jews, he fully implemented and enforced it without objection and without attempt to modify or otherwise alleviate its unjust provisions. We hold that he was a knowing and conscious participant in this plan. This was only a few months before the commencement of the war, and was of undoubted assistance in financing aggressive plans, and constitutes a violation of international law within the jurisdiction of this Tribunal.

Discrimination against Jews in food rationing.—Between December 1939 and 11 March 1940 Darré's department issued several decrees depriving Jews of special rations of food to which other German citizens were entitled.

Nevertheless, the Jews were insured the normal rations; the sick, invalid, pregnant women, nursing mothers and women in child bed, and Jews employed in heavy labor were given the same special rations allowed German citizens.

The prosecution concedes that these decrees were not in themselves so severe or their effects so harsh as to cause sickness or exposure to sickness and death, but asserts that they led to

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the more drastic cuts which finally led to the denial of foodstuffs necessary in life, such as wheat, fat, and eggs. However, no testimony or documents tending to prove this assertion have been cited, and the Court has been able to find none.

While these decrees show rank discrimination between Jews and others and evidence a callous social sense, the evidence does not substantiate that they are acts which come within the crimes charged in count five, and the defendant is exonerated respecting them.

Resettlement.—Several years prior to 1939 a race and settlement office had been set up in the SS under the jurisdiction primarily of Himmler, and Darré had undertaken, in addition to his other duties, to act as its chief. At that time and until the beginning of the war its functions consisted of procuring lands for and furnishing financial support, machinery, and other facilities to those Germans, either national or ethnic, who were displaced either by reason of treaties, such as that made with Italy, whereby Germanic inhabitants were compelled to leave their homes within areas such as had belonged to the Austro-Hungarian Empire prior to the Treaty of Versailles, and had been ceded to Italy, or because of the condemnation and appropriation by the Reich of agricultural lands for airfields, drill grounds, roads, and other public works. Except insofar as the lands used for resettlement were unjustly and illegally expropriated from Jews, the exercise of these functions, of course, do not constitute any breach of international law and then only insofar as they are in execution of or in connection with the planning, preparation, initiation and waging of aggressive wars.

We cannot say that it has been proved beyond a reasonable doubt that during that period acts of the defendant as Chief of the Race and Settlement Office were such as to constitute a crime within our jurisdiction.

One of the main purposes of the aggressive wars waged by the Nazi government against Poland and later against Russia was to gain Lebensraum for Germany; it was proposed and planned to confiscate their land and property from Poles and Jews, and property which was State-owned, and to utilize the same for resettlement of Reich Germans and ethnic Germans from the Baltic states who might be compelled to leave their farms in compliance with the agreement of the Russian Treaty of 23 August 1939. Later it included ethnic Germans from other countries.

Shortly prior to 4 October 1939 Himmler and Darré fell out, and the former obtained a draft decree from Hitler by which the Reich Leader SS and the SS was entrusted with the settlement of the German peasantry in the "newly acquired (or) occupied

eastern territories" (wording to depend on date decree issued) which at that time included that part of Poland. This aroused Darré's ire, and he wrote first to Lammers, then to Himmler, and finally on 27 October 1939 to Goering. In the first communication he stated *inter alia* (*NG–1759, Pros. Ex. 1654*) :

> "The settling of German peasants in the conquered Polish territories, or special parts of these territories can, as it is certain, only be a question of the re-Germanization of these territories, i.e., the safeguarding of these territories by populating them with volunteer German settlers or industrious peasants. I suppose I may take it for granted that the Germanization of the Polish population is not intended, only the Germanization of the newly acquired soil."

He referred to the fact that the requirements of the West Wall caused much property which would otherwise have been used for resettlement, to be devoted to defense projects and industrial purposes; that, bound up with the settlement of the eastern territories, was the question of the possible reparation of damages occasioned by the Polish agrarian reforms, and stated that dealing with this difficult problem presupposed an extensive knowledge of the Polish agrarian legislation and settlement activities (*NG–1759, Pros. Ex. 1654*)—

> *"All these are tasks for which the necessary planning and preliminary work were done carefully a long time ago in my Ministry and in close cooperation with the Reich Food Estate,* and for which, besides the officials of my Ministry, I have at my disposal my settlement and land economy authorities with their trained staffs of officials, likewise the settlement companies subordinated to me."

It is difficult to reconcile the statement underlined [italicized], namely, that these plans had been prepared a "long time ago" with Darré's testimony that he had no knowledge and took no part with any plans for aggressive war, and particularly that against Poland, for this letter was written on 4 October 1939, within 35 days after the invasion of Poland. It is wholly unlikely that a man, in writing a letter on 4 October 1939, would speak of plans prepared a "long time ago" if they had in fact been prepared between 1 September and 4 October 1939.

After claiming that these matters of resettlement called for technical knowledge and experience, he said (*NG–1759, Pros. Ex. 1654*) :

> "Therefore, in the interest of the great settlement task, it is my urgent desire that this, my very own task from the outset,

should not be hampered by special orders or given any other authority. Of course, in selecting settlers, applicants from the armed forces, the SS, and the SA will be considered in addition to the applicants from the ranks of the farmers, second and subsequent to agricultural workers, farmers displaced by public projects, and ethnic German refugees.

"The very variety of these applicants should prohibit the transfer of the problem of settling the eastern territories to an organization only in charge of one of these groups of applicants, especially since this organization is materially not in a position to perform this task."

In closing, he requested Lammers to pass his report to Hitler with these additional statements of the competent Reich Minister (Darré).

His letter of 5 October to Himmler, although addressed to "Dear Heini," said that it was one of the greatest disappointments of Darré's life to be officially informed that the task of the new settlement of German peasantry in Poland was to be taken away from him and handed over to the SS; he complained that Himmler had not answered his various communications on the subject and that he had been kept in ignorance of Himmler's Polish plans.

On 7 October Hitler's decree was issued putting Himmler in charge of the scheme (paragraph III of which defined Darré's duties), and on 27 October Darré wrote Goering enclosing copies of two express letters to Lammers describing meetings at which the draft of the 7 October decree was discussed with Lammers and Himmler where he produced the draft decree and demanded to know whether, by virtue of his rights as Food and Agriculture Minister, he was still permitted to settle on the basis of a "gracious decree" of Himmler's. He stated that Himmler finally agreed to concede the carrying out of this settlement to the Ministry of Food and Agriculture and that thereupon Ministerial Director Harmening, who was present at the conference, formulated this concession which was newly incorporated in the proposed decree, without which Darré's depatment would never have had the right to utilize the experienced machinery of the Ministry unless Darré earned the good will of Himmler and was permitted to do so as a special favor.

Harmening deposes that he attended the conference of 7 October to which Darré had made reference in his letter to Goering, and that Darré there obtained the insertion of article III in the decree which the deponent formulated at the conference, as a result of which Darré, for his department and settlement agencies, obtained jurisdiction over the new settlement of German peasantry in the Incorporated Eastern Territories.

On 24 November 1939, Himmler decreed that the employment of agricultural managers for all confiscated land and property in the eastern territories was to be handled exclusively by Darré and that no such persons were to be directly appointed through the Office of the Commissioner for the Strengthening of Germandom (Himmler himself).

On 17 January 1940, Darré, through his deputy Willikens, issued orders addressed to some 24 officials and groups of officers (apparently to everyone who had any interest in the matter of resettlement), reciting the situation arising from the decree of 7 October 1939, and that he had been commissioned with carrying out the new settlement or formation of German peasantry under the general instructions of Himmler; that he would make use of the settlement agencies and settlement companies to be newly established; that the "Central Land Office, Inc.," in the future, would get hold of and assess the entire Polish and Jewish agricultural property at the disposal of the Reich Commissioner, and later issue transfers, etc.; that the SS Race and Settlement Office would participate in the selection of settlers and work with the Reich Food Estate.

On 12 February 1940 Goering decreed that all agricultural and forest enterprises and property in the Incorporated Eastern Territories which on 1 September 1939, were not in the possession of ethnic Germans would be placed under public management, which also applied to such enterprises and properties which were requisitioned by the Reich Commissioner for the Strengthening of Germandom; that for carrying out this public management the defendant Darré, as Minister of Food and Agriculture, would appoint an administrator general who would be bound by Darré's directives; that all administrative authorities and courts were ordered to supply official help to the Ministry of Food and Agriculture and his agencies; and that the defendant, in accord with Himmler, would issue directives to carry out the provisions of Goering's decree, and Darré could decide, by administrative measures, any questions of doubt in individual cases.

On 28 February 1940 Darré, through his deputy Backe, set up the East German Land Management Company, Ltd., and appointed an administrator general for agricultural and forest enterprises which were to be placed under public management in accordance with the provisions of Goering's decree.

On 9 May 1940 Darré announced the location of the head and branch offices of this company.

On 10 November 1940 the Minister of Food and Agriculture promulgated regulations for the selection of Polish farms for purposes of resettlement by ethnic German farm owners and

German owners of farms in the Reich; that when these applications had been approved, the Polish property was to be taken out of the hands of the public administrator and, if necessary, out of the hands of its then owners and the applicant could move in. Such was the organizational form of the so-called resettlement of Polish farms.

In the latter part of November 1940 Himmler prepared a memorandum entitled, "Reflections on the Treatment of People of Alien Races in the East." He proposed that they be split up into as many individual ethnic groups as possible; that Germany was not interested in unifying, but in breaking them up into as many parts and fragments as possible; that only by dissolving the fifteen millions of people in the Government General and the eight millions of people in the eastern provinces, could Germany carry out the racial sifting necessary to select individual and racially valuable elements and bring them into Germany and there assimilate them; that no schools higher than elementary fourth grade would be permitted, and that they must be taught that it is a divine law to obey the Germans, and to be honest and industrious; that reading should not be required; that if a parent desired his children to receive better schooling, and they were considered racially perfect, they should be sent to school in Germany and remain there permanently; that cruel and tragic as this might be, it was still the best method if one accepted as un-German and impossible the Bolshevist method of physical extermination of the people.

Himmler said that this practice might discourage people of good blood from producing any more children, which, however, would be advantageous; that there would be an annual sifting of children, of 4 to 10 years, of whom the racially valuable would be sent permanently to Germany; that the remaining population would be used as people of labor without leaders and would be at Germany's disposal and furnish it annually with migrant workers, and those fitted for heavy work would be called upon to help work on the everlasting cultural tasks of the German people.

On 28 March 1940 Himmler made a file note or memorandum that on the 25th he had handed in his report on the "Treatment of Peoples of Alien Races in the East" to Hitler, who considered it "very good and correct," but ordered that only a very few copies should be issued, and that it should be treated with the utmost secrecy and be regarded as a Hitler directive. Among those to whom Hitler directed it should be distributed was Darré.

The defense denies that [NO–1880, Prosecution] Exhibit 1314, is the report mentioned in [NO–1881, Prosecution] Exhibit 1313, and further denies that Darré ever received it. The proof is not conclusive on this subject, but we believe that even if the report

submitted to Hitler was not precisely identical with Exhibit 1314, it no doubt followed the same line.

On 7 June 1940 Director Hugo Berger, Ministerialrat in the Ministry of Food and Agriculture and who, incidentally, had been appointed by Darré as deputy minister of the East German Land Company, published an article in the National Socialist Landpost [Nationalsozialistische Landpost] describing what had taken place in Poland, and how immediately behind the advancing army the entire occupied area became dotted with farmers from the Reich after their applications and qualifications had been approved and determined in Berlin; that in the Warthegau and the district of Kattowitz and the area constituting the Government General, they were directly supplied with agricultural workers from the Reich by the Reich Food Ministry; that they were furnished with tractors, steam plows, threshing implements, etc.; that these thousands of German farmers were settled in the Incorporated Eastern Territories on the lands of nearly 5,000 large Polish farms and hundreds of thousands of small Polish farms covering an area of nearly one-fifth of the agricultural area of Germany as it was up to December 1937.

Darré's defense is that his department and agencies had nothing to do with the matter other than to furnish agricultural machinery, supplies, and equipment; that he had no knowledge of the criminal nature of Hitler's plans and actions; and finally, that the East German Land Company, Inc., acted as a trustee for the expropriated Polish lands for the benefit of future owners, and that it was merely an agency of economic supervision.

It is further urged that Darré's settlement companies did not themselves confiscate land, but that this was done by the Main Trustee Office East, and they only administered the lands so confiscated; that whatever Darré did was only as the executive organ of Hitler.

This defense overlooks, however, the fact that all of these organizations were integral parts of the common plan to unlawfully deprive Jews and Poles of their land and reduce them to serfdom, and to settle it with Germans, and finally, to turn the title thereto over to these new settlers. Darré and his agencies played an essential part in this unlawful and cruel scheme.

While it is true that Himmler was the chief of the so-called resettlement and was Darré's superior, in most particulars, the fact remains that Darré strongly endeavored to get complete authority for himself and that he fought for and kept as much power as he was able, while, on the other hand, Himmler sought for and kept all the power he could and surrendered as little to Darré as he was compelled to. Under these circumstances Darré cannot be considered a mere automaton.

Notwithstanding the assertions of the defense, trusteeships were not for the benefit of the Polish and Jewish landowners. Their function was to insure an orderly administration and division of expropriated land for the benefit of Germany and Germans, and not of Poles or Jews. Darré knew what the plan was, and in his letters to Lammers he speaks of having "long ago" prepared it; his objections were not to the scheme itself, but to the fact that Himmler and not Darré was to be put in charge of it. When he failed to get complete control, nevertheless by repeated objections and remonstrances, he succeeded in having the proposed decree changed, giving him a large measure of authority, although Himmler was the over-all head; Darré selected those who were to become settlers, subject, of course, to the right of Himmler and the SS to pass upon the political and racial acceptability of the applicant; his administration furnished a large percentage of the new settlers.

The struggle between himself and Himmler was one for power and authority, and not one of difference in ideology or plan. This particular contest was symptomatic of the Nazi government. Each little Hitler was jealous of his prerogatives and each, to the best of his ability and influence, attempted to increase his jurisdiction, generally at the expense of one or another of his associates. That, in this instance, Himmler succeeded and Darré in part failed, does not redound to the latter's credit, but merely demonstrates that Himmler was closer to the source of power and was best able to assert his claims. These expropriations and resettlements took place while Poland and her allies were still valiantly fighting in the field to regain her occupied territories.

The acts here outlined violated the provisions of The Hague Convention [Annex to Convention No. IV] (Art. 46) and were a plain and outrageous breach of international law.

Darré was a conscious and willing participant in robbing hundreds of thousands of Polish and Jewish farmers of their property which subjected them to serfdom and finally consigned them to slave labor either in Poland or Germany.

We do not believe the defendant Darré to have been an unimaginable monster like Himmler, but his own letters show him to have been cruelly callous of the rights of others and utterly indifferent to the human suffering which the measures in which he willingly participated inflicted upon the unfortunate people of Poland.

Von dem Bach-Zelewski, called for the defense, testified among other things, that Darré was one of the leading anti-Semites in Germany, but not comparable with Streicher and his associates; that he was responsible for the anti-Semitism in agriculture, and

as a result of his methods all Jews were removed from the Reich Food Estate and as handlers of food and of food enterprises; that agriculture was the first section in which the elimination of the Jew was attempted; that it was Darré's theory that Jews were never to own landed property, and, as head of the Race and Settlement Main Office until 1938, he carried out this concept by prohibiting ownership of property by Jews; that in the newly annexed territories, resettlement took place by force and racial matters, although later on the execution of these plans was not placed in his hands.

In the particulars heretofore stated, Darré must be and is found guilty under count five.

DIETRICH

Dietrich held various important positions in the Party and in the Third Reich. On 1 August 1931 Hitler appointed him director of the press office of the Party.

On 28 February 1934 he appointed Dietrich Reich press chief of the NSDAP with the following powers (*NG–3477, Pros. Ex. 815*):

> "He directs in my name [in meinem Auftrage] the guiding principles for the entire editorial work of the Party press. In addition, as my press chief, he is the highest authority for all the press publications of the Party and of all its agencies."

The defendant insists that the proper translation of the term "in meinem Auftrage" is "by my order" rather than "in my name." Apparently, however, either translation is proper. In view of the facts shown by the evidence it makes no substantial difference which translation is adopted.

In 1933 he was appointed one of the Reichsleiters (Reich Leaders), a small group which constituted the leaders of the Party ranking next to Hitler himself.

In November 1937 he was appointed press chief of the Reich government, taking office at the beginning of 1938 as State Secretary of the Ministry of Public Enlightenment and Propaganda, under Goebbels, and remained in this position until 30 March 1945, a few weeks before the final collapse. He was a "convinced Nazi" and was one of Hitler's trusted lieutenants in the fight for power; his own witnesses describe him as being "moderately" anti-Semitic. No effort was made to satisfactorily define what was meant by this term other than that he was not a "radical" anti-Semite. The degree of his moderation is shown by his speeches and by his press directives which will be hereafter alluded to.

As Reich press chief he had at least the ostensible control over the press so far as to what it should and should not publish. There was a continual rivalry and contest between Goebbels and himself. The former attempted to seize and exert power while Dietrich strenuously resisted these attempts. The contest did not end until 30 March 1945 when Goebbels succeeded in having Dietrich dismissed from office. Dietrich was, during all the important years of the Nazi regime, a member of Hitler's personal entourage and spent most of his time at the Fuehrer headquarters. He supervised and determined what material of foreign and political news should be submitted to Hitler and used his position and presence in Hitler's entourage to maintain his position and powers. While he was unsuccessful in his efforts to separate the Reich press office from the Ministry of Propaganda, nevertheless, Goebbels was unsuccessful until the very end in seriously disturbing Dietrich's status and control over the press.

In view of the attempts made by the defense to minimize his influence and his power and authority, we quote from the diary of Goebbels' personal Referent, Semmler, where, under date of 28 November 1943, the following is found (*Dietrich 164, Dietrich Ex. 164*) :

> "The endless quarrel between Goebbels and the Reich press chief has been dormant for a while, only to flare up again and rage the fiercer. Their struggle to dictate the tone of the press has begun again. It was a trifle that started it, but Goebbels is raging, *as much because of his powerlessness to control Dietrich* as because of the issue at stake. [Emphasis supplied.]
>
> "Although Dietrich is State Secretary in the Propaganda Ministry he refuses to take orders or advice from Goebbels. He shelters himself safely behind Hitler, whose chief press officer he is.
>
> *"The press section in the Ministry, which took over the functions of the former press department of the Reich government, is formally not under Goebbels at all, but under Dietrich as press director of the Reich government.* [Emphasis supplied.] The headquarters of this department is the famous room 24, which is staffed day and night. From here are issued all political directives to the German press, all requests passed down from above, from Hitler, from Goebbels, from the Foreign Office, and from the Chancellery have to go through his office.
>
> "I myself pass to room 24 the press instructions which I receive, dictated by Goebbels, so that they can be passed from there to the newspapers.

"Now if there is some important news material, like a speech by Churchill, it can happen—or rather it is the rule—that at least three or four different pages of policy directives are produced. They are supposed to assist our editors in their work. But it is the obvious to me that they deprive writers of the last vestiges of intellectual independence. These directives often contradict one another sometimes only on a few points, but more often completely and utterly. In such cases there are only two courses of action open to the wretched official in room 24, who is almost continually talking on two telephones at once. Either he can forbid any mention or discussion of the Churchill speech for 24 hours—in which case the British newspapers say the speech has given the Germans such a shock that they don't know what to say—or he will take directive points from the Hitler-Dietrich document and ignore the suggestions of Goebbels and Ribbentrop.

"Then on the next day Goebbels is furious when he reads the newspaper and finds that no attention has been paid to his instructions. Often I am suspected of not having passed them on, and I can only save myself by producing the original copy of the directives.

"*Oddly enough, Dietrich's authority extends only to the press,* while Goebbels has exclusive control over the radio and over its news services." [Emphasis supplied.]

Entry of 30 November 1943—

"One result of the latest quarrel with Dietrich is that Goebbels has decided to intensify the political use of the radio. He is going to give special attention to the development of its news services."

Again on 13 March 1943 Semmler noted:

"Of course he [Goebbels] controls public opinion with his powers over radio, films, and to a certain extent over the press. I say to a certain extent because he has to share at least half the work with the Reich press director (as spokesman of the Fuehrer's headquarters), with the Foreign Office and with the High Command. Many of the directives which I pass to the press in Goebbels' name are useless because at the same moment the Fuehrer's headquarters (that is to say Dietrich) is putting out the opposite directive on the same theme. And in cases of doubt anything that comes from the Fuehrer's headquarters has Hitler's personal authority and takes priority, however trivial the matter."

Goebbels told Fritsche in November 1942 (*Tr. pp. 8976–8977*):

"I shall never be able to take the press from Dr. Dietrich, and Hitler will never permit me that the press will be completely eliminated from the Ministry of Propaganda."

These statements agree with the oral testimony of the witness Karl Paul Schmidt of the Foreign Office and of Werner Stephen, Heinz Lorenz, and Fritzsche. We believe that the statements made in these affidavits lie closer to the facts than the attempts made in the oral testimony of the affiants to minimize Dietrich's power and authority.

Dietrich established the so-called "Tagesparole" which were daily instructions to the press. This step was to prevent either Goebbels or other ministers or agencies from exercising control over the press releases. Dietrich appointed his own subordinates who had immediate charge of these releases, and his personal approval was required for each release including the directives and statements of policy desired to be issued by other agencies, including Goebbels himself, the Foreign Office, the OKW.

It is true that the views, opinions, and desires of many of the ministers were quite generally included in the releases, but the final authority lay in Dietrich. Each morning before the Tagesparole was issued to the press conference, the Foreign Office and other ministries and agencies, including the Ministry of Propaganda, furnished material for the press releases. Here again Goebbels interfered and to some degree was successful, until the advent of Sundermann. From that time on Dietrich regained control.

The press department also issued weekly directives and various kinds of material for periodicals and magazines. The defense has offered testimony that Dietrich had no control over this material; that Bade, who was chief of the periodical division, was Goebbels' man and not Dietrich's. This, however, is denied by the witness Gensert who was employed in a responsible position in that division and who was a member of the opposition to the Nazi Party and was himself finally arrested by the Gestapo; also by the affidavit of Lorenz.

Lorenz there deposes that between Dietrich and Bade, chief of the periodical press department, there was a close personal relationship; that Dietrich protected Bade strongly and brought about his promotion to Ministerial Dirigent; that Bade deputized for Stephan in his capacity as personal expert (personal Referent) and that Dietrich asked Bade frequently to visit him in the Fuehrer's headquarters, where the latter assisted him in drafting his speeches and articles; that upon Dietrich's suggestion Bade had been appointed to the department as chief where previously he had only been in charge of one main section of the department.

In view of Dietrich's determination to have and maintain power and authority, in view of the powers conferred upon him as press chief of the Nazi Party and press chief of the Reich government,

and the fact that when any member of his department followed Goebbels' wishes rather than those of Dietrich, he was disciplined or removed; we have no doubt that whenever Goebbels' desires or those of any other minister differed from the press policy which Dietrich wished, Dietrich's policy prevailed.

Press propanganda was one of the bases of Hitler's rise to power and one of the supports to his continuation in power. He so states in Mein Kampf (*NG–3552, Pros. Ex. 811*):

"The whole art consists in doing this so skillfully that everyone will be convinced that the fact is real, the process necessary, the necessity correct, etc. But since propaganda is not and cannot be the necessity in itself, since its function like the poster consists in attracting the attention of the crowd and not in educating those who are already educated or who are striving after education and knowledge, its effect for the most part must be aimed at the emotions and only to a very limited degree at the so-called intellect * * *.

"But if, as in propaganda for sticking out a war, the aim is to influence a whole people, we must avoid excessive intellectual demands on our public, and too much caution cannot be exerted in this direction.

* * * * * * *

"The receptivity of the great masses is very limited, their intelligence is small, but their power of forgetting is enormous. In consequence of these facts, all effective propaganda must be limited to a very few points and must harp on these in slogans until the last member of the public understands what you want him to understand by your slogan.

* * * * * * *

"Its task is not to make an objective study of the truth, insofar as it favors the enemy, and then set it before the masses with academic fairness; its task is to serve our own right, always and unflinchingly.

"The purpose of propaganda is not to provide interesting distraction for blasé young gentlemen, but to convince, and what I mean is to convince the masses. But the masses are slow moving, and they always require a certain time before they are ready even to notice a thing, and only after the simplest ideas are repeated thousands of times will the masses finally remember them."

Point 23 of the Party program states (*1708–PS, Pros. Ex. 812*):

"(a) All writers and employees of the newspapers appearing in the German language be members of the race.

"(b) Non-German newspapers be required to have the express permission of the State to be published. They may not be printed in the German language.

"(c) Non-Germans are forbidden by law, any financial interest in German publications, or any influence on them, and as punishment for such violations the closing of such a publication as well as the immediate expulsion from the Reich of the non-German concerned. Publications which are counter to the general good are to be forbidden. We demand legal prosecution of artistic and literary forms which exert a destructive influence on our national life, and the closure of organizations opposing the above-made demands."

In the National Socialist Year Book for 1938 the following is said with respect to Dietrich as Reich press chief of the NSDAP:

"The Reich press chief of the NSDAP is, in addition to being the Fuehrer's personal press chief, the competent Reichsleiter for all Party agencies entrusted with political-journalistic tasks which are subordinated to him professionally and politically without prejudice to their organizational subordination. The most important of these are the Pressamtsleiter and Referents of all offices of the Reichsleitung, the editors in chief of the Party press, the Gau press offices of the NSDAP, as well as all the rest of the press political organizations of the NSDAP.

"The mouthpiece of the Party as far as the whole of the press is concerned is the National Socialist Party News Service, under the direction of the Chief of the Press Political Office.

"* * * The entire press at home and abroad obtains all its information regarding the NSDAP from the offices of the Reich press chief in Berlin and in Munich."

In September 1935 Dietrich delivered a speech at the Party rally in Nuernberg, stating, among other things (*NG–3536, Pros. Ex. 821*):

"The liberalistic age boasted of the press as a seventh power. A power, therefore, which was not of the people, but which aspired to govern them. In the National Socialistic State the press constitutes the public conscience of the nation. A power destined to serve, but not govern the people * * *.

"Since the press reflects the course of events daily, even hourly, it is natural that its purification which was in the nature of an introduction to the revolution, had to manifest itself as one of its first and most decisive operations.

* * * * * * *

"In National Socialist Germany that kind of press was eliminated with lightning speed by the arm of the law! A fate which it deserved a thousandfold overtook it on the first day of the revolution.

"The same article of our Party program further adds: 'Newspapers violating the community interests are to be prohibited!'

"And, dear Party members, we did our full duty by our program in this respect also. In National Socialist Germany, enemies of the State and the people are not tolerated in the press; they are exterminated.

"The program continues: 'In order to facilitate the creation of a German press, we demand that all editors and co-workers of newspapers published in German must be Volksgenossen.'

"In this respect also we can ascertain that a complete job has been done. The National Socialist Press Decree has eliminated all parasites from German journalism. Today there are no more Jews in the German press!"

The speech abounds with phrases such as the following:

"The Jewish liberal-profiteering press.

* * * * * * *

"We have eliminated the Jew from the press, and since then, dear Party members, we do indeed feel freer and better in this field.

* * * * * * *

"We have cleaned the Jews out of the German press, and therefore it is more than others the target of their hatred."

On 4 October 1933 the Editorial Control Law was issued which limited editors to those who possessed German citizenship, had not lost their civic rights, and qualified for a tenure of public offices, were of Aryan descent, and not married to a person of non-Aryan descent, etc.

Not only were the German newspapers under strict control, but as the program of expansion and aggression moved forward, it was made applicable to the new territories; the Saar, Austria, Sudetenland, Danzig, the occupied eastern territories, Poland, Netherlands, Bohemia, and Moravia.

On 9 October 1934, Dietrich officially informed the editorial staff of the National Socialist press that he made the district press leaders of the Party responsible to the Reich press office for all the news in the papers in the districts dealing with the Party, even if the papers were not Party papers.

On 9 March 1939 Sundermann, Dietrich's chief of staff, informed the Party press offices and Referents that daily directives would thereafter be sent to the Party press offices in order to efficiently control and guide the press in forwarding its wishes in publication questions immediately to the whole German press in the same manner as used by the press divisions of the governments.

Jewish problem.—The record is replete with press and periodical directives of a general anti-Semitic nature. We relate only a few of those which were directed toward Jewish persecution and the "final solution."

On 15 February 1940 the Tagesparole issued the following directive (*NG–4698, Pros. Ex. 1258*):

> "The foreign press declares that 1,000 German Jews have been transported to the Government General. The report is correct but is to be treated as confidential."

On 21 August 1941, as part of the secret information in the Tagesparole, the press was informed (*NG–4702, Pros. Ex. 1259*):

> "It is to our interests that all *Jewish statements against Germany* or the authoritarian states should be well noted. The reason for this wish is that measures of an inner political nature may be expected."

On 26 September 1941 this information in the Tagesparole is to be found (*NG–4701, Pros. Ex. 1261*):

> "With reference to the *marking* of Jewry, the opportunity is offered to handle this theme in the most varied ways, in order to make clear to the German people the necessity for these measures, and *especially to indicate the noxiousness of the Jews.* From tomorrow on the special delivery service will provide material to be used as proof of the injuries which Jewry has inflicted upon Germany, and the destiny it has envisaged for her, past and present. This material is recommended."

On 3 February 1944, the Tagesparole announced that (*NG–3408, Pros. Ex. 1275*):

> "The 'change in the diplomatic status of the Soviet Republics' * * * and the applause with which it is greeted by the Jewish press throughout the world, reveals a gigantic international Jewish conspiracy, * * *".

and that:

> "* * * the German press now has the task of energetically taking up this theme of the 'change in the diplomatic status of the Soviet Republics,' and to brand this clumsy Jewish trick

with convincing words * * *. It can be seen that this whole maneuver is a Jewish trick of gigantic proportions. The fact that the Jewish newspapers throughout the world welcome this development clearly indicates that this is a gigantic conspiracy of Judaism, a Jewish conspiracy of international proportions, * * *".

and that:

"In these problems also we can recognize the truth that the Jewish question is the key to the history of the world."

On 2 March 1944 it is said (*NG–3410, Pros. Ex. 1277*):

"The anti-Semitic campaign must be emphasized still more than up till now as an important propagandistic factor in the world struggle. Therefore, at all possible occasions world Judaism has to be stigmatized as the one whose cunning machinations are even opposed to the interests of its hostess nations. On top of all that these voices are to be recorded which show clearly the real Jewish intentions of destruction and to make them the subject of convincing exposure. In this respect German journalism has to aim at keeping awake in the German people the feeling that Judaism constitutes a world danger on the one hand, and on the other, above all, to carry the discussions abroad."

On 27 April 1944, the Tagesparole stated (*NG–3412, Pros. Ex. 1279*):

"One of the fundamental topics of the German press will remain the anti-Semitic campaign. In this respect very useful material has come to hand from Hungary. When utilizing the reports on the measures taken there against the Jews it has to be kept in mind that they will not be reproduced without extensive statements on the crimes committed by the Jews, which caused these measures.

* * * * * * *

"When, in treating the first point of the Tagesparole, the newspapers will arrive at the general tendency of their commentaries—Judaism's guilt—then just the second point of today's Tagesparole must be the cause, taking Hungary as the pretext, to start again on a large scale the anti-Semitic campaign. This one principal topic of the German press, on account of the present reports from Hungary, must be principally reopened once more. However, not only the mere reports on the measures taken by the new Hungarian Government against the Jews must be published, moreover the present

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judaification of Hungary has to be shown up, which has led to such measures * * *. When this Jewish guilt has been extensively treated by the press, then the new anti-Semitic measures of the Hungarian Government can be mentioned."

On 1 June 1944 a confidential information to the Tagesparole contained the following statement (*NG–4706, Pros. Ex. 1281*):

"The treatment by the press of the war aims, the combat methods, and the reign of terror, etc., of our enemies is incomplete and ineffective if, in every case, and in the leading articles of the newspapers, Germany's determination to oppose this Jewish chaos and to fight for German victory with bold resolution is not expressed."

We now come to the articles appearing in the periodical directives. Under the heading "If the Jew Comes into Power," it is said (*NG–4715, Pros. Ex. 1264*):

"The Zeitschriften-Dienst (Periodical Service) has already referred several times to the necessity for rousing all power to resist in the German people. The Deutsche Wochendienst (German Weekly Report) shows what has happened to those nations which have become the victims of Judaism. *In this connection reference can be made to Hitler's words that at the end of this war there will be only survivors and annihilated. In pointing to the firm intention of Judaism to destroy all Germans, the will for self-assertion must be strengthened.*"

Under the heading "Europe Protects Herself Against the Jews," it is said (*NG–4715, Pros. Ex. 1264*):

"The declaration of war by the Jews against the European nations resulted in energetic measures being taken against the Jews, not only in Germany but also in many other European states. The Deutsche Wochendienst recommends the periodicals to issue comprehensive descriptions, and in this connection furnishes material and suggestions for subject matter. It must be pointed out that in the articles, as a result of their racial composition, the Jews are hostile to anything constructive and any peaceful community life. For reasons of self-preservation, the nations must protect themselves against the Jewish destructive forces * * *.

"Let us avoid any criticism of the measures taken against the Jews by individual countries, and comment on their suitability and the extent to which they can be put into practical effect."

On 2 April 1943, it is said (*NG–4710, Pros. Ex. 1266*):

"Of equal value with our anti-Bolshevist propaganda is that against Jewry. It must be a matter for irrefutable certainty to every member of our people that the Jews are the inexorable enemies of our nation and are behind bolshevism as well as behind the plutocracies. * * * The treatment of this subject belongs in the framework of the *rousing of feelings* of hatred recently described here as necessary.

* * * * * * *

"In the works for which the Deutsche Wochendienst brings numerous suggestions and subject proposals, it must be emphasized that with Jewry it is not the same as with other peoples, that there are individual criminals, but that Jewry as a whole springs from criminal roots and is criminal by disposition. The Jews are not a nation like other nations, but bearers of a hereditary criminality. The criminal class of all lands speaks a specialized language, of which the most important elements are Hebraic. The annihilation of Jewry is no loss to humanity, but as useful to the peoples of the earth as capital punishment or security custody for criminal offenders."

On 22 April 1943 the Periodical Service stated (*NG–4711, Pros. Ex. 1268*) that the Jews were responsible for the Katyn mass murder of Polish officers, and that the Jews wanted to murder the peoples of Europe, and that the Katyn incident was not alone a hateful outbreak of Jews against Poles, but rather a hateful policy of Jews against all non-Jews.

Under "Manner of Treatment" is found (*NG–4716, Pros. Ex. 1272*):

"Emphasize: Every individual Jew, wherever he may be, and whatever he may do, shares the guilt. There is no such thing as a 'decent Jew' but only a more or less cleverly designed camouflage. The Jew is a notorious criminal."

It is thus clear that a well thought-out, oft-repeated, persistent campaign to *arouse the hatred* of the German people against Jews was fostered and directed by the press department and its press chief, Dietrich. That part or much of this may have been inspired by Goebbels is undoubtedly true, but Dietrich approved and authorized every release, as his own witnesses admit.

The only reason for this campaign was to blunt the sensibilities of the people regarding the campaign of persecution and murder which was being carried out.

Hitler, on 30 January 1942, in a widely published speech, said:

"On 1 September 1939 I already declared in the German

Reichstag—and I am careful about rash prophecies—that this war will not end as the Jews imagine, namely with the destruction of the European Aryan people, but rather that the result of this war will be the destruction of Jewry. For the first time other nations will not bleed away, but rather for the first time the old Jewish law will be applied; an eye for an eye, and a tooth for a tooth.

"The longer this war will continue, the more world Jewry might just as well know this; anti-Semitism will spread. It will find encouragement in every prison camp, in every family which will come to know the real cause for their sacrifices. And the hour will come when the most evil world enemy of all times will have, at least for a thousand years, played out his role."

These press and periodical directives were not mere political polemics, they were not aimless expressions of anti-Semitism, and they were not designed only to unite the German people in the war effort.

Their clear and expressed purpose was to enrage Germans against the Jews, to justify the measures taken and to be taken against them, and to subdue any doubts which might arise as to the justice of measures of racial persecution to which Jews were to be subjected.

By them Dietrich consciously implemented, and by furnishing the excuses and justifications, participated in, the crimes against humanity regarding Jews charged in count five.

He is, and we find him guilty.

VON ERDMANNSDORFF

Von Erdmannsdorff joined the Foreign Office in 1918 and by 1928 had risen to the position of Embassy Councillor (Botschaftsrat) in China. After Hitler's rise to power in 1933 he was recalled to the Foreign Office and became chief of the East Asia group. In 1937 he was sent to Budapest as German Minister. He was recalled in June 1941 and became deputy chief (Ministerial Dirigent) of the Political Division of the Foreign Office.

Until 1943 he was subordinate to Woermann and thereafter to the latter's successor, Hencke.

The facts.—The defendant did not take the witness stand and offered no evidence in his behalf. It was stipulated by the prosecution and the defense, and thereon the Tribunal ruled, that only such evidence as had been admitted up to the time the defendant rested his case, that is, 16 July 1948, should be considered against

him. In its brief the prosecution has referred to documents or exhibits and oral testimony received subsequent to 16 July. In most instances this evidence was offered against other defendants and apparently the prosecution, due to a lapse of time and the size of the record of this case, overlooked its stipulation and the order the Tribunal previously adverted to. We shall not consider such exhibits or testimony.

The Political Division, except insofar as it was interfered with or bypassed by the Foreign Minister von Ribbentrop (a situation which quite often arose, not only with regard to political but other divisions of the Foreign Office), had the duty to become thoroughly informed of the political situation in foreign countries. This, of course, involved obtaining both general and confidential information which might facilitate a correct evaluation of foreign political situations.

The Political Department, or Division, had various subdivisions, headed by a staff of Referents and other employees, who specialized on a particular nation or group of nations. In theory, and quite generally in practice, instructions on political matters and policy, and the attitude to be taken by the German diplomatic corps abroad were given by the Political Division.

The Foreign Minister was entitled to refer to and obtain the opinion of the division on matters of foreign policy. In principle, the functions and duties of this division differed little from like departments in the Foreign Office of other states, the heads of which, of necessity, rely largely upon the advice of men who have long experience in and expert knowledge of political and other conditions in a particular country or specialized area.

Von Ribbentrop, however, motivated in part by a tremendous egotism and vanity, and also burdened by a subconscious realization of his inadequacies and ignorance which his vanity forced him to conceal, resented and often ignored or bypassed the experts of his political department or directed them to transmit orders to his German representatives abroad without having considered their opinions. It would have been difficult to imagine a man less fitted by native ability, experience, knowledge, or temperament to guide the foreign policy and advise the head of any major state, and it is not to be doubted that many of the fatal mistakes and crimes of the Nazi foreign policy are directly attributable to these factors, plus his pride and slavish adherence to Hitler.

That von Erdmannsdorff had knowledge of the crimes against humanity committed against the Jews, and the persecution of the churches, we have no doubt. But a careful examination of the evidence reveals little or nothing more. It is far from enough

to justify a conviction. The deputy chief of the Political Division, particularly under the von Ribbentrop regime, had little or no influence. He was subordinated to the Under Secretary of State of the Foreign Office, and he was little more than a chief clerk.

We find von Erdmannsdorff not guilty under count five, and the prosecution having dismissed all other charges against him, it is ordered that on the adjournment of the Tribunal he be discharged from custody.

KEPPLER

The defendant Keppler in 1932 became the special adviser for economic affairs in the Party. In 1933 he became a member of the Reichstag. After the rise to power he became Hitler's Plenipotentiary for Economic Questions, and after the death of von Hindenburg his title was changed to that of Plenipotentiary for Economic Questions to the Fuehrer and Reich Chancellor. When Goering became Plenipotentiary for the Four Year Plan Keppler lost much of his power, although he remained one of its directors in charge of the Office for Soil Research, Oils, and Fats.

In the summer of 1937 he was directed to take part in Austrian problems and sent to Vienna to handle matters relating to the prospective Anschluss, and upon its accomplishment he, for a time, acted as Reich deputy for Austria. In the spring of 1938 he became president of the Reich Office for Soil Research in the Ministry of Economics. When the DUT was organized, he became chairman of its Aufsichtsrat and he also served in the Aufsichtsrat of the Continental Oil Company.

Shortly after the inauguration of the Hitler regime the "Office for the Repatriation of Racial Germans" was organized, which had, among other things, the function of bringing into Germany and resettling within its borders so-called ethnic Germans (citizens of other states), who might desire, or by persecution, or by force of other treaties or other agreements with other states, were required to leave the countries of which they were nationals and enter the Reich. We do not question that these functions were quite within the bounds of international law. There are, however, indications of certain other functions of a different character, but as to them the defendant Keppler is not involved and it is not necessary to discuss them.

Early in October 1939 a little more than 1 month after the invasion of Poland, Hitler appointed Himmler Reich Commissioner of the Office for the Strengthening of Germandom, which was directed by Hitler—

(1) To bring back those German citizens and racial Germans abroad who were eligible for permanent return to the Reich;

(2) To eliminate the harmful influence of such alien parts of the population as constituted a danger to the Reich and to other German communities; and,

(3) To create new German settlement areas, especially by resettlement of German citizens and racial Germans coming back to the Reich.

It was intended at first to use for that purpose those portions of Poland which were attempted to be incorporated into the Reich, and which became known as the Incorporated Eastern Territories. Later Alsace and other territories which were occupied by Germany were utilized in this program.

No attention was paid to the property rights of those whose property was confiscated or who were either evacuated for labor services into the Reich or who were used as serfs in the territories where they had formerly lived and had their farms and property. In Poland not only were the lands of the Polish State confiscated, but privately owned farms, estates, or businesses as well. The property thus involved was not only the property of the Jews but that of Poles as well.

On 7 June 1940 Dr. Hugo Berger, a member of the Aufsichtsrat of the DUT (Deutsche Umsiedlungs-Treuhandgesellschaft), and who had been appointed to this post upon the recommendation of the defendant Keppler, published an article in the NS Landpost that nearly 5,000 large farms and hundreds of thousands of small Polish farms had been confiscated and brought into the resettlement program; that the total area thus involved amounted to almost one-fifth of the agricultural area of the whole Reich. These confiscations, evacuations, and deportations were carried out with coldly planned and calculated brutality. They were contemporaneously described by Frank, Governor of the Government General, who was tried and sentenced to death by the International Military Tribunal and thereafter executed.

In a communication addressed to Hitler in 1943 he wrote (*NO–2202, Pros. Ex. 1328*):

> "If I may say so, the starting point for my opinion in this question is the consciousness that it is one of the most honorable and most urgent tasks of the German leadership to create a home in the eastern territories, conquered by the German sword and blood, for the ethnic Germans who had been withdrawn from the spaces formerly under alien domination. But to me it seems necessary to weigh carefully the question whether this aim should be realized in the middle of the fight for the

existence of the German people * * * or whether it would not be more expedient to postpone the execution of these measures to a date when it will be possible to carry out the necessary, basic preparations for the introduction of ethnic German settlers without being hindered by difficulties caused by the war and without the loss of important economic contributions to be made by the territory envisaged for resettlement, to the detriment of the German war effort.

"I refrain from discussing in detail smaller settlement and resettlement measures, such as have been planned and carried out several times without sufficient contact with the offices of the general administration; I shall limit myself to describe the attempts, planned and carried out on a larger scale in the district of Zamosc since the end of the last year, to settle ethnic Germans in this territory; these measures have been carried out by the offices of the Reich Commissioner for Strengthening of Germanism. * * *

"According to my own conviction, the reason for the complete destruction of public order is to be found exclusively in the fact that the expelled persons were in some cases given only 10 minutes, in no cases more than 2 hours to scrape together their most necessary belongings to take with them. Men, women, children, and old people were brought into mass camps, frequently without any clothing or equipment; there they were sorted into groups of people fit for work, less fit for work, and unfit for work (especially children and aged persons), without regard to possible family ties. All connections between the members of families were thus severed, so that the fate of one group remained unknown to the other. It will be understood that these measures caused an indescribable panic among the population affected by the expulsion, and led to it that approximately half of the population, earmarked for expulsion, fled. They fled in their despair from the expulsion district and have thus contributed considerably to the increase of the groups of bandits which have existed for some time in the Lublin district and which act with continuously increasing audacity and force. This movement has extended, like waves in a pond, also to the inhabitants of those rural districts which were not—in any case not yet—intended for expulsion. In the course of these events it has even happened that the newly settled ethnic Germans, forced by casualties inflicted on them by bandit actions, frequently banded together into armed troops and procured for themselves from the surrounding villages, with alien population, on their own initiative and by force of arms the necessary implements for their farms.

"This chaotic situation was further aggravated by retaliatory measures by the constabulary in the Lublin district to forestall additional attacks on ethnic German villages. These retaliatory measures consisted, among others, in mass shootings of innocent persons, especially of women and children, and also of aged persons, between the ages of 2 to 80 and over. Experience taught that these measures have only a slight deterrent effect on these bandits who are frequently under Bolshevist leadership. But they increase the exasperation and the hatred of those innocently affected, including those parts of the population which are frightened that in future they might be affected by similar measures, and thus now active followers for the resistance movement led by the Polish intelligentsia, and ample propaganda material for the extremely active Bolshevist agitation is played into their hands.

"The consequences of this semi-rebellious state of affairs, caused by the expulsion measures in the Lublin district, especially in the Zamosc area and vicinity, made themselves felt throughout the whole of the territory entrusted to me. I am proud of the fact that in 3 years of German administration of this territory under my authoritative influence, hardly any sacrifices of German lives had to be made, in spite of the necessity to carry out numerous measures necessitated by circumstances. In the short period from the beginning of the expulsions, carried out against my will, considerable and deplorable casualties have occurred among the German people settled here, among the police and the Wehrmacht, as well as among the civil administration personnel. * * *

"* * * I want to stress here only the single fact that none of the foreign workers employed for Germany's final victory have reached nearly as low a nutritional level as the alien workers used here. * * *

"In connection with the execution of the resettlement plan described by me, the point of view has often been maintained that all humanitarian considerations must be completely neglected. May I give the assurance that I, too, share this view utterly and completely."

After the close of the western campaign there were wholesale expulsions from Alsace, and as found by the International Military Tribunal, "between July and December 1940, 105,000 Alsatians were either deported from their homes or prevented from returning to them."

The entire resettlement-repatriation program was essentially an SS enterprise. Himmler was its chief, and in carrying it out

the various Reich agencies were subordinated to him and he had the right to call upon them for the necessary assistance and cooperation. It involved many phases—

(1) The confiscation and evacuation of lands so that they might be made available for resettlement;

(2) The selection of those ethnic Germans who were deemed fit for settlement in the East and other occupied territories (this fitness was determined in part by their political reliability);

(3) The selection of those who could not be trusted in the border zones but were to be settled in the Reich where they could be re-educated in the German spirit;

(4) The rejection and assignment to labor or concentration camps of those politically unreliable and those who failed to show willingness to give up their citizenship and become citizens of the Reich or otherwise displayed an anti-German attitude;

(5) The registration and classification of the so-called ethnic Germans into various groups;

(6) Their transport either into the Reich or the newly occupied territories, or to labor services or to concentration camps, according to their classification;

(7) The custody, control, and disposition of their old homes, farms, businesses, property, and funds;

(8) The allocation and assignment of new homes, farms, and businesses in the area in which they resettled; and,

(9) Financing and supporting them until such time as they became self-supporting, and making available to them the necessary furniture, equipment, machinery, and the like to enable them to carry out their part of the program.

These phases of the program were divided among a number of agencies: the Main Staff Office of the Reich Commissar for the Strengthening of Germandom; the Volksdeutsche Mittelstelle (VoMi); the Main Race and Settlement Office (RuSHA); the German Racial Registration Office (DVL); and the German Settlement Trust Company (DUT).

It is of the latter that we are immediately concerned because of Keppler's connection with it. It became immediately apparent to Himmler that the financial problem involved in this gigantic uprooting of peoples and shifting them from old homes to new, financing them and settling them in new homes, providing furniture, equipment, livestock; and above all, taking custody, and keeping an account of the value of the old property, and charging against the same the funds advanced in order to put them into new surroundings and to finance them until they were self-supporting, was of prime importance to the program and complicated in nature.

The defendant Schwerin von Krosigk, Reich Minister of Finance, had suggested to Himmler that this be done through an official office which could be set up. Himmler approached Keppler, who had acted as Hitler's economic adviser, and asked his advice as to the advisability of following Schwerin von Krosigk's proposal.

The intricate problems involved not only skill in handling but often immediate decisions. Keppler objected to the bureaucratic idea, feeling that it would involve too much red tape and proposed that a trust company be set up to handle these problems. At Himmler's request he consulted Schwerin von Krosigk who recognized the merits of Keppler's proposal and agreed to it. It was under these circumstances that the German Settlement Trust Company (Deutsche Umsiedlungs-Treuhandgesellschaft) was formed. Keppler became chairman of its Aufsichtsrat and nominated the other members of the board as well as the members of the Vorstand—these Himmler confirmed.

Keppler remained in that position until some time in 1943 when, because of his membership in the Reichstag, it became necessary for him to retire. While the DUT was, in form, a private, limited liability corporation, it was in fact a governmental agency. It was formed for and engaged solely in carrying out its prescribed part of the program of resettlement. The Aufsichtsrat, or supervisory board, included representatives from the Ministry of Finance, the Foreign Trade Office of the Foreign Organization of the Party, a member of Himmler's personal staff (Greifelt), the defendant Kehrl of the Ministry of Economics, a member of the Foreign Office, a director of the Reich Bank, a director of the SS liaison office for ethnic Germans, and a Vorstand member of the Official German Auditing Company, together with two ethnic German leaders. This was done because, as Keppler himself says, he desired the various Reich offices affected by the problem to have representatives on the board.

The concept of forming corporations under general corporate laws and utilizing them to carry out governmental functions was not a new one; it had been used in other countries as well as in Germany. This form of organization is adopted as a matter of convenience, as it is more elastic and therefore more efficient than formal, governmental agencies. Irrespective of form, such corporations are, in fact, arms of the government carrying out governmental functions. If these functions and the manner in which they are administered constitute a violation of international law, those responsible for and connected with it are guilty.

The defendant Keppler and the defendant Kehrl assert that the actual executive and administrative duties of the DUT were inde-

pendently carried out by its Vorstand, and if criminal responsibility exists it is those men who are responsible and not the members of the Aufsichtsrat.

The internal organization of German corporations is somewhat different from that of incorporated companies in the United States or Great Britain. The Vorstand is composed of those who have direct charge and control of executive and administrative matters. It may be said that it is comparable with those members of the board of directors of an American or English company who are the executive officials of the company, while the Aufsichtsrat is composed of the directors who hold no such position. The DUT Aufsichtsrat had a working committee composed of Keppler, the defendant Kehrl, and Greifelt of Himmler's Main Staff Office for the Strengthening of Germandom. This working committee may be likened to the executive committee of the board of directors of an American corporation. That the Aufsichtsrat of the DUT was not composed of mere figureheads without power or influence is evident from the care which was used by Keppler in selecting its members, and the interest he took in himself selecting its executive staff. Neither may we overlook the fact that this was, in fact, a governmental corporation charged with the performance of basic, governmental tasks. It was Keppler's idea; its Aufsichtsrat and Vorstand as well as the more important members of its executive and administrative staff were chosen by him. He knew its functions and he knew what part it played in the general scheme of resettlement. If the DUT had an important part in a crime cognizable by this Tribunal, he bears a part in the criminal responsibility thereto.

The resettlement of ethnic Germans took place at least in the following territories: in the Warthegau, a part of Poland, in Bessarabia, Bucovina, White Russia, the Dobruja, Southern Tyrol, and Alsace. By the end of 1942 it had opened offices in Danzig, Innsbruck, Katowice, Marburg, Poznan, Strassburg, Agram, Bolzano, Bucharest, Paris, Belgrade, Bialystok, Lemberg [Lwow], Lublin, Reval, Riga, Vienna, Fulnek, Kauen, Klagenfurt, Litzmannstadt [Lodz], Luxembourg, Metz, Rann, Zamosc, Zichenau, Krakow, and Prague. The tremendous scope of its activities is evidenced by the fact that it carried 250,000 accounts on its books dealing with individual property transactions, that is those relating to the amounts realized from the property taken from ethnic Germans who became settlers on farms and other property made available to them in the newly occupied territory; its daily mail amounted to 6,000 pieces; and its employees reached 1,800 in number.

The defendant Keppler insists that the DUT had no functions

and took no part either in confiscations and evacuations, or did it have anything to do with the selection of lands and properties in which the new settlers were to be placed. Nevertheless, we find in a report of 19 January 1944, addressed to Rasche by the Allgemeine Waren Finanz Gesellschaft, a statement that the DUT had already assigned 600 parcels of real estate to Baltics resettled in Poznan.

That the DUT and its officials knew of the forced nature of these resettlements, and contemporaneously worked with it, is evident from the testimony of Ludwig Metzger, head of its legal department at Luxembourg, who was present at and had personal knowledge of the details of the forced evacuation and resettlement of the people of Alsace to which we have heretofore referred. These unfortunate people were rounded up by other agencies, who were a part of this program, and the evening before they were deported the DUT obtained their names and interviewed them; on the next morning they saw that the property was listed and that the movable goods in their homes were registered. He states: "There is no doubt that they did not go voluntarily."

Their homes and businesses were taken over by ethnic Germans selected from other portions of areas occupied by the German Government.

That Keppler himself kept in close touch and was intimately acquainted with the major steps taken by the DUT is shown by his testimony. He says (*Tr. p. 19550*):

> "First of all, I had to reform the firm, and I had to select the Vorstand members and the Main Staff for the most important positions. Then, I helped organize the firm; I was informed of all major steps, but of course I was not informed about details."

It may well be true that the DUT neither confiscated the property of the victims in order to give living room to ethnic Germans, nor took any physical part in the forced emigration of those who were selected for resettlement, but we deem this wholly immaterial. Beyond question the DUT was an essential part of the criminal scheme and without it the crime could not be carried into successful execution.

The defendant Keppler asserts that so far as his activities in the DUT are concerned, the indictment is insufficient and indefinite in its charges against him, and that he offered testimony regarding the matter under the impression that the evidence offered by the prosecution under the same was addressed to count eight of the indictment—membership in criminal organizations. The documents were offered and received under count five, and the prosecution document books plainly so state.

Certain paragraphs of this count state in general terms the crimes with which the defendants are charged, while subsequent paragraphs deal with specific incidents involved in the general charge.

The allegations of the indictment follow the same plan and pattern disclosed in the indictment in the International Military Tribunal and in those of other indictments before these tribunals. Many of the defendants, including Keppler and Kehrl, shortly after arraignment, filed motions against the indictment on the ground of insufficiency and indefiniteness. On 5 January 1948 we overruled this motion, and we refer to the memorandum filed with our order. The question of the insufficiency of indictments of this kind was considered by Military Tribunal III, Case 3 (the Justice Case),* and a like conclusion was reached.

In accordance with our order of 5 January, we therefore received evidence of particular acts alleged to have been committed by the several defendants which came within the general allegations of the indictment, although not among those specifically mentioned in the paragraphs which followed.

The only purpose of specific allegations is to enable the defendant to prepare his defense. Ample opportunity has been afforded to the defendants so to do. The prosecution closed its case on 27 March 1948, and at the time every defendant had been advised, not only of the specific acts upon which conviction was sought, but of the evidence offered in support thereof. The Court recessed until 4 May 1948, in order to permit the defendants to prepare their defense. The defendant Keppler did not present his defense until 16 July 1948, and the defendant Kehrl not until 11 August. Each had more than ample time within which to prepare his case. No defendant suffered, or could have suffered, any surprise or disadvantage. There is no merit in the claims which they now urge.

There is no doubt, and we so find, that the defendant Keppler knew the plan, knew what it entailed, and was one of the prime factors in its [DUT] successful organization and operation.

We find him guilty under count five.

KEHRL

From 1933 to 1938 the defendant Kehrl acted as economic adviser to the Gau Brandenburg; from November 1934 to October 1936 he was a consultant for textiles and cellulose in the Keppler office then dealing with German raw materials; from October 1936 until January 1938 he was head of Main Office IV–2 in the

* United States *vs.* Josef Altstoetter, et al., judgment, Volume III, this series.

Raw and Working Materials Department of the Four Year Plan; from 1 February 1938 until November 1942 he was head of the Textile Division of the Reich Ministry for Economics, and also acted as general Referent for special tasks in that Ministry, and was then promoted as the head of its Main Department II; from November 1943 to about May 1945 he was Chief of the Raw and Basic Material Office in the Reich Ministry for Armament and War Production, and was director of the Central Planning Office. He was also officer in chief of the textile organizations which exploited textile industries and resources in the occupied territories, as well as those in France, and became a member of the Aufsichtsrat and one of the three members of the working committee of the DUT.

It is alleged that early in 1942 Kehrl became a member of the Circle of Friends of Himmler and actively participated thereafter in the meetings of that circle; that the activities of the SS during this period included participation in schemes for Germanization of occupied territories according to the racial principles of the Nazi Party, the deportation of Jews and other foreign nationals, and widespread murder and ill-treatment of the civilian populations of occupied territories.

It is not alleged that the Circle of Friends, as a body or organization, participated in any such crimes. Kehrl was a member of the Circle of Friends, but no evidence has been offered which tends to establish that the circle, as such, had anything to do with any crimes charged in count five, and guilt cannot be predicated because of his membership in or attendance at the meetings of the Circle of Friends.

Kehrl was, however, a member of the Aufsichtsrat of the DUT, representing the Ministry of Economy and, with Keppler and Greifelt, was a member of the working committee of that body. It is unnecessary to here repeat what we have heretofore said regarding the DUT, its functions, and the part it played in the Germanization and resettlement program. Kehrl admits that he knew its basic purpose, but denies that as a member of the Aufsichtsrat or working committee he was "complete informed" of the activities of the DUT; that there may have been five or six meetings of the board which he attended and the activities were rather large, but he was by no means informed about all of them.

The defendant was both guarded and reticent in describing what he knew and what he did, which is itself of some significance. Kehrl is possessed of an active and inquisitive mind and a very high degree of executive ability. It is apparent from his testimony regarding other matters that he has a memory of

extraordinary capacity. His membership on the board was not an accident, but he was chosen by Keppler because of his capabilities and the fact that he would there represent the Ministry of Economy, which was itself intensely interested not only in economic development of the Reich but the occupied territories as well.

We are quite convinced that he was thoroughly aware of what the DUT was expected to do, what its policies were, and what it in fact did. As one of the responsible officers of the company he was responsible for its action. It was an important component in the scheme of German resettlement and in the crimes charged in count five relating to it, and we have already found the defendant Keppler guilty under count five with regard to the charges above stated.

We find Kehrl guilty under count five in view of his activities in the DUT and the resettlement program.

On 24 January 1940, by order of Funk, Minister of Economy, a directive was issued regarding the sale of clothing to Jews and of the issuance of clothing rations to them. This directive stated that the serious state of supply in the field of textiles and shoes—in connection with the over-available supply in Jewish families—made it necessary, as in the field of food, to issue the following regulations (*NID–14890, Pros. Ex. 2032*):

1. Jews shall not receive a clothing ration card.

2. Jews, on principle, shall not receive any permit for textiles, shoes, and sole material.

3. Jews are reduced to self-help and must make application to the Reich Association of Jews in Germany for the purchase of second-hand material which was open to them without purchase permits.

4. The issuing agencies are authorized to give Jews purchase permits if they perform manual labor and the lack of work clothing and shoes would jeopardize their use for labor, and they cannot get them any other way, and in an emergency where help from the Reich Association for Jews is not possible in time.

In defense Kehrl states that he did not sign this directive of his own initiative, but that the Minister of Propaganda, together with Hitler's deputy, had decided after the beginning of the war that the Jews were not to get any clothing cards, and this was passed on to the provincial economic officials by teletype on 24 November 1939, and that finally this directive averted hardships in that by agreement with the Reich Association of Jews some clothing could be acquired, and that in certain instances ration coupons were to be issued.

While we are not satisfied that this explanation is accurate, and in fact, the regulation shows upon its face that this was not its

purpose, nevertheless we do not overlook the fact that in this instance Kehrl was no more than a conduit transmitting his superior's orders and had no voice in the matter. The document shows on its face that he signed it by order of his Minister.

Here guilt is not proved beyond a reasonable doubt and Kehrl should be and is acquitted in connection with this transaction.

LAMMERS

The seizure of power found the defendant Lammers employed as a legal expert in the Ministry of the Interior. He had joined the Nazi Party in February 1932. On 30 January 1933 Hitler appointed him Secretary of State [Staatssekretaer] in the Reich Chancellery, and in August 1934 he was appointed its chief. On 26 November of the same year he was made a Reich Minister without portfolio with the title "Reich Minister and Chief of the Reich Chancellery." On 14 February 1938, he was appointed as executive member of the Secret Reich Cabinet Council, but this council never functioned. On 30 November 1939, 2 months after the Polish invasion, the Ministerial Council for Defense of the Reich was created with Goering as its chairman, and Lammers became one of its executive members.

Among his duties was to present matters to Hitler, sometimes with and sometimes without his own recommendations; to transmit Hitler's decisions on these and other matters to the appropriate Reich Ministries and agencies; to cooperate with the members of the Reich Cabinet and other agencies of the government and the Party; to coordinate and, if possible, reconcile the views and proposals of other ministries with respect to legislation, and to examine, and at times to prepare laws, decrees, and regulations which were under consideration; to ascertain the views and opinions of other ministers in such matters; and to investigate and report and recommend action regarding disputes which might arise between ministers, agencies, and officials.

Although as Reich Minister he had no particular executive functions in the usual sense, both his responsibilities and powers were substantial. Among the reasons which impelled Hitler to raise him to Cabinet rank was that he might become one of the highest Reich authorities possessing the prestige and authority incident thereto, and thereby relieve Hitler of many details and decisions. He was and continued to be one of the most important figures in the Reich government.

On 2 May 1939 Stuckart wrote Lammers reporting the situation in the Protectorate and included a copy of Frank's report from which it was apparent that even more radical measures of re-

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prisals were to be used and elections postponed due to the weakness of the racial German elements in that territory.

On 15 September 1942 the Reich Protector of Bohemia and Moravia reported to Lammers that between 1 May and 1 September 3,188 Czechs had been arrested, 1,357 shot under courts-martial proceedings, and informed him of the infamous massacres at and the razing of the villages of Lidice and Lazeky, and of the fear of the populace that they were to be decimated by police measures, and the proposal that Czechs be put into the Reich Labor Service; that Czech police battalions under German command be organized; and that the personnel at the Skoda and Bruenner Munitions works be assigned to man their aircraft defense.

Lammers cosigned the decree of 1 September 1939, which established in Bohemia and Moravia an administration under a Reich Protector, and introduced the German Security Police into that territory, giving them authority to investigate and combat all action inimical or dangerous to the state and public, thus subjecting the people to the mercies of the Security Police.

The invasion of Bohemia and Moravia and their incorporation into a Protectorate, and the attempt to make them a part of the greater German Reich were acts of aggression and were crimes against peace, and the acts of terrorism and the imposition and subjection of the inhabitants to the jurisdiction of the Security Police were wholly unlawful.

Poland.—On 12 October 1939, Hitler issued a decree cosigned by Lammers, the defendant Schwerin von Krosigk, and six others, declaring that that unincorporated portion of Poland occupied by German troops should be formed into the Government General, and appointing Frank as head of the government. The decree gave the Council for Reich Defense, the Commissioner of the Four Year Plan, and the Governor General the right to legislate by decree, and gave to various supreme Reich agencies power to make arrangements necessary "for the planning of German life and the German economic sphere" in these territories, and that all administrative decrees required for implementing and supplementing the Fuehrer decree would be issued by the Minister of the Interior.

Frank issued a number of decrees, based on the authority thus given him, which established the secret police in those territories, extended forced labor to Polish youth between 14 and 18 years of age, ordered all Jews to be concentrated into forced labor troops, required Jews of both sexes to wear the yellow star of Zion on their clothing, required all Jewish businesses to be plainly marked as such, and forbade Jews to use German names, and

authorized the Higher SS and Police Leaders to supervise and enforce these measures.

On 7 May 1942, Lammers cosigned with Hitler a decree giving Himmler jurisdiction in Poland, not only as Reich Leader SS but as Reich Commissioner for the Strengthening of Germandom, and providing that where a disagreement arose between the Governor General and Himmler, Hitler's decision should be obtained through Lammers.

In Frank's diary for 19 July 1941, he states that during a discussion with SS Obergruppenfuehrer Krueger and others, he wired Lammers stating that in accordance with Lammers's communication of the previous day he had started preparations to take over the whole civil administration in the occupied Polish territories designated by Lammers and proposed to start a gigantic rehabilitation program with Polish and other labor forces at his disposal. It has been established by the evidence in this case, and by the judgment of others of these Tribunals, that the population of Poland was regarded and treated as slaves and compelled to work as and where the government of that territory determined.

During the year 1942 a bitter quarrel broke out between Frank, on the one hand, and Himmler and Higher SS and Police Leader Krueger, who had been assigned to the Government General, on the other. Each preferred charges against the other. That both the Governor General and Himmler's SS and Police Leaders had committed gross and continued outrages upon the population is beyond question, as has been adjudicated not only by the IMT, but by various others of these Tribunals. Lammers was instructed to investigate and report to Hitler.

He evidently came to the conclusion that it was best to cooperate with Himmler and opposed Frank for reasons which we think had little or nothing to do with the merits of the controversy, but which may be accounted for inasmuch as at that time Himmler's star was in the ascendant and Frank's position had deteriorated. On 17 April 1943 he forwarded to Himmler a proposed mutual report to be submitted to Hitler. Based on material submitted by Krueger, Lammers prepared his report, and it was submitted to Krueger and his approval obtained before sending it to Himmler. In view of the defendant's protest that he was uninformed of mistreatment, brutality, slave labor, and spoliation of the occupied territory, and of the mistreatment of the Jews therein, this report is illuminating. It states that the tasks of the Government General were as follows (*2220–PS, Pros. Ex. 2256*):

"(1) For the purpose of securing food for the German people, to increase agricultural production and utilize it to the

greatest extent; to allot sufficient rations to the native population engaged in war work and to deliver the rest to the armed forces and the homeland.

"(2) To employ the manpower of the native population only for the immediate war purposes and to put at the homeland's disposal such manpower which is not needed for the last-named purpose.

"(3) To consolidated German folkdom in the Government General and by means of resettlement to create German strongholds in the eastern border districts by means of colonization by racial Germans transferred from other places.

* * * * * * *

"(5) To obtain troops as far as possible out of the native population for the fight against bolshevism."

The report then criticized the Frank administration for its failures to perform these tasks in that it had failed to deliver the prescribed quota of agricultural products, had failed to stop all trade enterprises not essential to the war, that although 750,000 metric tons of grain were to be delivered to the Wehrmacht, only 690,000 tons were actually delivered, and that only 510,000 tons remained out of the harvest to feed the population of 16,000,000; that the bread ration was cut to 1,050 grams per week compared to 1,675 grams in the Protectorate, and 2,600 grams in the annexed eastern territories; that as a result, black marketing had become prevalent and the prices had risen three to four hundred percent; that if proper coordination had been accomplished, it would have been possible to provide the population, *working in the interests of Germany,* with a minimum of food and other needed commodities, which would thus prevent the creation of a black market and would result in the voluntary return of reserves of manpower to employment; because of these failures the utilization of manpower met with greatest difficulties; these difficulties were increased by the *elimination of Jewish manpower,* but that such elimination was not the cause of the difficulties and had proper management of manpower been afforded, the elimination of Jewish manpower would not have caused difficulties worth mentioning, but as things were, *manpower could only be obtained by more or less forceful methods, such as catching church and movie goers and transporting them into the Reich;* that instead of being strict and severe where necessary, but otherwise acting in a big-hearted manner, granting certain liberties, the Governor General inaugurated a promotion of cultural life on the part of the Polish population which knew no bounds in itself; that under the prevailing circumstances, and particularly in view of Ger-

many's military situation, such measures could only be explained as a weakness and thus brought results directly opposite to those sought.

From this report several things become clear. First, that the sole interest of Lammers and Himmler was that *only* those inhabitants who were working in the interest of the German war effort should receive food; second, that the Governor General had stripped Poland of its food supplies leaving a great mass of the population to starve; and third, that Lammers then knew that Jews were being eliminated. His statement that this term only referred to them being eliminated from labor shipments to the Reich is not borne out by the document, and we believe, is wholly without foundation.

The report speaks for itself and contains no reference to Jews in connection with the labor which was to be sent to work in the Reich. Lammers asserts that he was in no position to ascertain the facts regarding the charges made by Rosenberg against Krueger and the SS, or the charges made by Himmler and the SS against Frank, although he was satisfied that serious abuses existed in Frank's administration, particularly on the part of members of his family—the relatives whom he had appointed to office.

In view of his position and the fact that he had been directed to investigate and report to Hitler, we deem his explanation without factual merit.

Frank's diary entry of 5 August 1944 states that he sent a telegram to Lammers that the city of Warsaw was in flames; that the burning down of the buildings was the best means to prevent the insurgents from using them as shelters; and that after the suppression of the revolt the city would meet its deserving fate and be completely destroyed or afterward flattened out.

In the IMT trial the defendant testified that he knew this report came to him and was immediately transmitted to Hitler and in all probability he passed it on to the chief of the OKW as well. On further questioning he again reiterated that the report was received. In this case he flatly denies that the telegram ever reached the Reich Chancellery, and based his denial on an alleged conversation with one of Frank's subordinates and on inquiries which he had made of officials of his own chancellery.

Frank's diary was a contemporaneous record of events and there he had no reason to make a false or erroneous statement about the telegram. Evidently it was an event which at the time he thought important, and therefore included it in his diary. If there had been any doubt in Lammers' mind, or he had any difficulty in recollecting whether he received and transmitted it,

we have no doubt he would have so stated when testifying before the IMT. He not only remembered it, but also the disposition which he made of it, and when pressed for an answer as to how in fact he could say that he had no knowledge of the atrocities committed in Poland, he again testified that he remembered the telegram. We do not credit his present denial that he ever saw it.

On 9 May 1944 Liebel of the Central Office Ministry for Armaments and War Production wrote Lammers regarding wood supplies from Norway, wherein he states (*NG–2835, Pros. Ex. 2630*):

> "I regret, dear Reich Minister Lammers, that you, the highest authority on matters pertaining to Norway, as Reich Minister and chief of the Reich Chancellery, had not been consulted about this matter at the very beginning."

While this statement may have been an exaggeration, it is clear that a leading responsible official in one of the most important ministries of the Reich deemed that the defendant's position was one of high importance and authority and it is apparent from the evidence in this case that such was the fact. In the matter in question, Terboven having asserted that he did not have the necessary manpower in Norway to procure this wood, arrangements were made through Lammers to ship some 15,000 Russian prisoners of war to Norway for that purpose. It is interesting to note that Sauckel, in his report on the matter, states that 4,050 Russian prisoners were already on their way, but that the additional 11,000 made available were in such a state of health that they could not be employed for another 3 or 4 weeks, and he would therefore advance 5,000 men from the civilian sector and was negotiating with Speer regarding the matter.

Russia.—On 16 July 1941 a conference was held at Hitler's headquarters, attended by Rosenberg, Keitel, Lammers, Goering, and an amanuensis. Hitler said there that it was superfluous for Germany to announce its aims; that where it had the power it could do everything, and where it was lacking power, it could do nothing; that it should emphasize that it was forced to occupy, administer, and seize certain areas in the interest of the inhabitants to provide order, food, transportation, etc. *Thus, no one would recognize that it initiates a final settlement,* but that this need not prevent Germany from taking all necessary measures—shooting, desettling, etc.—and it would take them; that Germany did not want to make any people enemies prematurely and unnecessarily, but, "*we* must know clearly *that we shall never leave those countries.*" Therefore, the plan must be—(1) to do nothing which must obstruct the final settlement, but prepare for it in

secret; (2) to emphasize that Germans are liberators. In particular the Crimea must be evacuated of all foreigners and be settled by Germans only, and in the same way part of Galicia would become Reich territory; that while present relations with Rumania were good, nobody knew what they would be in the future, and that this must be considered, and German frontiers drawn accordingly; that the task was to cut the giant cake in order, first, to dominate it, second, to administer it, and third, to exploit it; that the fact that Russia had ordered partisan warfare behind the German lines had the advantage that it would enable Germany to eradicate everyone who opposed it; that there never again must be the possibility to create a military power west of the Urals; that the entire Baltic countries, as well as the Crimea, must be incorporated into Germany, with a large hinterland, together with the Volga Colony, while the Baku must become a German military colony; that the Kola Peninsula in Finland must be taken because of the large nickel mines there.

At this conference the matter of the appointment of governors for the Baltic countries was discussed, and Goering emphasized that these appointments must be based on securing food supplies and, so far as necessary, trade and communications. Rosenberg emphasized his opinion that a different treatment of the population was desirable in every district, and that in the Ukraine Germany should start with a cultural administration, awake the historical consciousness of the Ukrainians, and establish a university at Kiev; but Goering countered by stating that the first requisite was to secure the German food situation and everything else could come later.

Goering insisted that this gigantic area be pacified as quickly as possible, and stated that the best solution was to shoot anybody who looked sideways, while Keitel insisted that the inhabitants themselves ought to be made responsible because it was impossible to put a sentry at every shed and railway station, and if anyone did not perform his duties properly, he should be shot.

This conference clearly disclosed what German plans were. Lammers admits having been present but states that he was absent during portions of the conference preparing drafts of decrees which were to be signed, this, notwithstanding the fact that when testifying before the International Military Tribunal he stated that he assumed that he stayed there until the end. But whether he absented himself during part of the time is quite immaterial, as we are convinced that he was either there personally or was fully informed of what took place.

Lammers prepared and cosigned with Keitel a Fuehrer decree of 17 July 1941 establishing the government for the newly occu-

pied eastern territories, appointing Rosenberg as Minister for this area, which included the Baltic states. He was given broad legislative powers, subject only to the competency of the Wehrmacht and the Reich authorities responsible for military operations for the functioning of railroads and the postal service. The necessary implementing ordinances were to be issued by Rosenberg in agreement with Lammers and the chief of the OKW. Lammers testifies that these latter provisions were put in the decree so that the other ministries could participate, and that it would be possible to ask Hitler to intervene. In view of the fact, however, that Rosenberg was the only one at the conference who had evidenced the slightest degree of interest in the native population in the proposed East Ministry, and that he had further indicated that the notorious Koch was inclined to go his own way without regard to Rosenberg's orders, the explanation given by the defendant does not ring true. As cynical and callous as Rosenberg proved himself to be, there can be no doubt that the fate of the indigenous population would have been happier under him if he had full and complete power, than it was with a division of powers between himself and other agencies.

On 17 July 1941 Lammers cosigned with Keitel the Hitler decree conferring on Himmler authority to give directions concerning police security matters to the Reich commissioners in eastern territories, and to assign SS Police Leaders to them for the purpose of guaranteeing police security.

On 20 August 1941 Lammers cosigned the Hitler decree appointing Gauleiter Koch, Reich Commissioner for the Ukraine. It is universally conceded by all parties to this case that his regime resulted in an unparalleled orgy of brutality, oppressions, spoliation, and murder.

Lammers was not only informed of Koch's publicly expressed sentiment that "whoever believes to find gratitude with the Slavs for kind treatment has not made his political experiences in the NSDAP while in the East, but in some clubs of the intelligentsia; the Slavs will always interpret kindness for weakness," but he was also informed of Koch's crimes.

Lammers states that he reported this to Hitler and first asserts that he supported Rosenberg against Koch, but later testifies that it was his official duty to act as an intermediary between the two officers and Hitler and gave such support to one or the other as he could, and he always attempted to remain neutral in the whole affair, and was neutral. We agree with his statement that he had no power to dislodge either Rosenberg or Koch, and that when he reported the mutual incriminations which each made regarding the other, the matter was thereafter wholly in the hands of Hitler.

Night and Fog (Nacht und Nebel) Decree.—It is alleged that Lammers supervised, prepared, or cosigned the notorious Nacht und Nebel Decree, but the record does not substantiate this. Without question he knew of it and of its ultimate implications, but knowledge is not enough.

Germanization.—The Germanization and resettlement program, at least insofar as it involved any crimes cognizable by this Tribunal, was initiated by the decree of 7 October 1939, which Lammers cosigned. He admits that it was redrafted under his directions, making various modifications in a proposed form of decree submitted by Himmler. The defendant asserts that at the time he had no intent to authorize the commission of any crime or that he knew that any crimes were committed under it. He stated when the proposal first came up he concurred in its advisability, but suggested to Hitler that the project be postponed until after the war, but Hitler refused to take his advice. One of the earlier drafts contains the recital that (*NG–1467, Pros. Ex. 1304*) :

> "The Poland established at Versailles has ceased to exist. The opportunity, therefore, arises for the Greater German Reich to receive and settle in its area German men and women who had to live abroad up to now and to eliminate those of foreign nationality or race."

The pertinent recital in the decree as issued states (*NO–3075, Pros. Ex. 1305*) :

> "The consequences which Versailles had on Europe have been removed. As a result the Greater German Reich is able to accept and settle within its space German people, who, up to the present, had to live in foreign lands, and to arrange the settlement of national groups within its spheres of interest in such a way that better dividing lines between them are attained."

Lammers insisted that he was responsible for this change, and we do not doubt it. It is merely using less blunt language than did the first draft. The defendant does not suggest that the program expressed in the first draft was changed or modified by the final draft, and, of course, it was not. We place no credence on his statement that he did not know that the crime of driving the Poles from their homes and confiscating their property was intended. We are convinced that he was fully advised as to the precise nature of the program and consciously and willingly participated in it.

Lammers received a copy of Himmler's notorious memorandum "On the Treatment of Peoples of Alien Races in the East," which was submitted to Hitler in May 1940, wherein he proposed that no education higher than the fourth elementary school grade should be given the indigenous population. The children of valuable blood should be taken away from their parents and sent to the Reich, never to return, and that the peoples of the East should be reduced to a position of uneducated ignorant serfs of the Germans without culture or leadership.

In October 1943 Lammers distributed to the Ministry for the Eastern Territories, the OKW, the Party Chancellery, and to Himmler, the Hitler Decree of 11 October which provided that the racially valuable children born out of wedlock in the occupied territories, whose fathers were Germans and mothers of the local population, should be taken from their mothers and put into the custody of the Reich. He directed the agencies mentioned to acknowledge the decree and take the necessary steps.

On 19 May 1943 the defendant cosigned with Keitel a Fuehrer decree automatically conferring German citizenship on foreigners of German origin who were then members of the Wehrmacht, the Waffen SS, the German police, or the Todt Organization, and providing that like foreigners thereafter joining any of these organizations should automatically become German citizens on the date of their admission. In view of the forced recruitment of ethnic Germans who were nationals of other countries, it is apparent that this was a part of a general plan to gain absolute control and jurisdiction of such persons. It was without legal justification or right. One who is unlawfully conscripted into the armed forces of a nation, other than his own, cannot be compelled to accept citizenship and be subjected to laws of a country other than that of his choice.

On 28 March 1940 the defendant Lammers wrote Himmler, transmitting a photostatic copy of an article entitled, "Deportation is Being Continued—Death March from Lublin—Deaths from Freezing." This article was allegedly based on findings of the Polish-Jewish Service Committee which was cooperating with the American Friends Organization as well as with delegates of the Red Cross. It stated that in spite of the objections of the Government General, deportation of German Jews to eastern Poland was being continued at the order of Himmler. It recites how the deported persons had to abandon all their property and were not even allowed to take a suitcase, and the women compelled to give up their handbags; that those who had overcoats were deprived of them; that they were not allowed to take any cash, food, beds, or household articles; and all arrived at Lublin

with only the clothing they wore; that men, women, and children were compelled to march from Lublin to the villages where they were to be quartered, over roads deep with snow and at temperatures of 22° Centigrade; that many froze to death, and others, including children, were so badly frozen that it was necessary to amputate their limbs; that on arrival at their destination the survivors were lodged in stables and sheds with no food other than black bread; and that up to 12 March 230 Jews from Stettin had perished.

On 3 December 1940, Lammers wrote von Schirach, Reich Governor for Austria, that Hitler had decided in view of von Shirach's reports that the 60,000 Jews residing in Vienna should be deported rapidly to the Government General because of the housing shortage in that city, and that he and Lammers had informed the Government General in Krakow, as well as Himmler, about this decision.

On 13 December Stuckart forwarded to Lammers and to the highest Reich agencies a memorandum regarding the 10th Ordinance implementing the Reich Citizenship Law, stating that it was drawn with the following in mind: that, in connection with the population of the Incorporated Eastern Territories, it was necessary on principle to exclude part-Jews of alien stock, and that only the portion found capable of Germanization, after careful selection, would be permitted German citizenship; that the remainder would be placed in the position of protectees which would be dependent upon their residence in the Reich, which would be lost when that residence was abandoned; that the protectees, under the regulations to be adopted, would receive only a minimum of rights; that the Jews would be included in this new regulation; that those Jews who were stateless would remain so, even if living in the Reich; that Reich Jews living abroad would lose citizenship and become stateless; that the confiscation of property might restrict Jewish emigration, but after the war a solution of the Jewish problem could be found which would not depend on the voluntary action of other countries.

To this memorandum Lammers interposed several objections: first, that it made Jews in the Reich protectees; secondly, he inquired, in view of the fact that Jews in the near future would be deported from Germany, whether it was worth while to create a special status for them; that in any event they were not Reich citizens; that as to Jews who lost their Reich domicile by emigration or expulsion, only an amendment to the citizenship law was needed. Lammers discussed the matter with Hitler, who refused to permit Jews to be called "protectees."

The defendant denies any knowledge prior to 1945 of the "mass extermination" of Jews, but admits that he heard reports, and received intimations and anonymous communications regarding the same, and admits that he was aware that many Jews were being murdered. He denies that he was a violent or radical anti-Semite.

We are unable to give his statement any credence. He had intimate knowledge of and participated in drafting and cosigning many, if not most, of the anti-Jewish laws, ordinances, and regulations. According to his own statement he was the official channel through which information came to and decisions issued from Hitler, and he was the Reich Minister charged with coordinating the views of the various ministries upon this and other matters of legislation, ordinances, and decrees, and consulted with them and their agencies regarding them.

His own views on the subject were expressed in an article which was published in 1944 in which he said (*NG–1633, Pros. Ex. 3905*):

> "The first product of a constructive and organic structure on the European Continent had hardly begun when it already faced its most severe and most decisive test. In the life and death struggle against the plutocratic and Bolshevistic views led by world Jewry this test has lasted almost 5 years."

While on the stand, but before he was faced with this article, he testified (*Tr. p. 22633*):

> "This question is one with which I dealt frequently in my reading at the time, but I was never able to come to any final conclusion. I do, however, realize that the Jews bear a considerable part in the guilt in all the wars of the world."

Lammers heard Hitler's speeches in which he spoke of the extermination and annihilation of the Jews, and admits that he heard the word "extermination" which was one which Hitler often used in various speeches but said, "the question was what he meant by it." We are convinced that Lammers was under no illusions as to Hitler's meaning.

He was advised of the application of the German anti-Jewish laws to Luxembourg; enactments which were, without question, in violation of international law and the Hague Convention.

On 30 January 1941 there was submitted to his chancellery the proposal that all Jews of German citizenship, irrespective of their emigration, be declared stateless, and their property confiscated to the Reich, and he thereupon stated there could be no

scruples against the suggestion thus made by the Minister of the Interior.

Various proposals were offered which finally resulted in the decree of 4 December 1941 which Lammers cosigned, whereby the Poles and Jews in the Incorporated Eastern Territory became bound to conduct themselves according to German law and the regulations introduced for them by the German authorities; to abstain from conduct liable to prejudice the German sovereignty or the prestige of the German people; made them subject to the death penalty for manifesting anti-German sentiments, or for possible conduct which lowered or prejudiced the prestige or well-being of the Reich, or the German people; which subjected them to trial by special court, by the district judge, or the police courts; deprived them of any right of appeal and "the right to challenge a judge on account of partiality"; permitted arrests or detention on suspicion, and subjected them to other coercive measures, forbade them to be sworn as witnesses; deprived them of the right to act either as prosecutors or in a subsidiary capacity; subjected them to courts martial at the whim of the Ministry of the Interior, the Ministry of Justice, or the Reich Governor; conferred on courts martial the right to impose the death sentence or to turn the victim over to the Gestapo.

This decree was also made applicable to Poles and Jews within the Reich if, prior to 1 September 1939, they were domiciled in Poland. That there was no legal authority to subject the inhabitants of Poland, whether Poles or Polish Jews, to German law, cannot be questioned, and these measures were adopted solely to repress and persecute Poles and Polish Jews.

Final solution.—We have heretofore discussed the notorious Wannsee conference of 20 January 1942, in which the "final solution" of the Jewish question was discussed in the presence of representatives of practically all of the highest Reich agencies. Kritzinger of the defendant's Reich Chancellery was present. Lammers insists he did not know that Kritzinger was to be there, and that he did not instruct him to be present, and that Kritzinger did not there represent him. This we do not believe.

Shortly after the conference Schlegelberger, acting Minister of Justice, wrote to Lammers of certain objections, none of which, however, related to the final solution, but rather to the technical details of compulsory or simplified divorce of Germans from Jewish spouses. At the conference of 6 March, Boley, one of Lammers's ministerial counsellors, appeared representing the Reich Chancellery. It appears in the minutes of the meeting (*NG–2586, Pros. Ex. 1453*):

"According to information given by the representative of the Party Chancellery, one of the very highest authorities expresses the opinion, in connection with the discussion on the question of persons of mixed blood in the Wehrmacht, that it would be necessary to divide up the persons of mixed blood into Jews and Germans, and that it was unwarrantable under all circumstances to have the persons of mixed blood permanently existing as a third small race. This requirement would not be met by means of sterilizing all persons of mixed blood and permitting them to remain in the Reich territory."

In July 1942 Lammers wrote to all the highest Reich agencies informing them of Rosenberg's appointment as commissioner to conduct the spiritual battle against Jews and Free Masons, and requested these agencies to support Rosenberg in the fulfillment of his task.

The record contains a number of documentary exhibits which show that Lammers was familiar with and took part in discussions relating to measures against Jews. On 20 July 1942 he stated that Hitler had repeatedly expressed the opinion that applications by part-Jews for status equal to that of Germans had been treated too generously, and in the future they should be allowed only if there were special reasons for exceptional treatment, that is, positive achievements, such as work for the Party in the early days. Lammers requested that future action should be based on Hitler's attitude.

Notwithstanding Lammers' denials, we believe and find that he was informed and knew that the extermination of the Jews was proposed, and that he consciously and willingly participated in measures which were intended for and adapted to that purpose.

Judicial persecution and murder.—The orderly process of the courts and the comparative leniency of the sentences imposed by them irked Hitler, and this fact was conveyed to the Ministry of Justice. Lammers and Schlegelberger conferred, and on 10 March 1941 the latter wrote Lammers enclosing his letter to Hitler. Schlegelberger asked that it be transmitted to Hitler immediately and enclosed a draft of a proposed decree which would enable the public prosecutor to intervene in civil cases, and enable him to file application for the reopening of proceedings if he was of the opinion that new proceedings and a new judgment were necessary in cases deemed of special importance to the national community.

The letter to Hitler is one of cringing servility, in which the writer expressed his earnest intention to install justice with all its branches more and more firmly within the National Socialist

State; that there were still judgments which did not entirely comply with the necessary requirements, and in such cases he proposed to take the necessary steps. He calls attention to the fact that Hitler had created the extraordinary plea for nullification of criminal cases, and states that it is desirable to educate the judges more and more to a correct way of thinking, conscious of national destiny, and for this purpose it would be invaluable if Hitler could let Schlegelberger know if a verdict did not meet his approval, inasmuch as the judges were directly responsible to the Fuehrer, and were conscious of their duties, and firmly resolved to discharge them accordingly. Lammers was consulted by Schlegelberger regarding this decree.

On 21 March 1942 after Lammers had consulted with Schlegelberger and Bormann, he suggested to Hitler the issuance of a decree for the alleged simplification of the administration of the law and with Hitler cosigned it. Some of the changes made in the original draft which appear in the final decree were made by Lammers himself. Under it the Minister of Justice, in agreement with Lammers and the Chief of the Party Chancellery, was authorized to implement the decree to take the necessary administrative measures, and in cases of doubt, to decide matters administratively.

Schlegelberger made a suggestion for a decree giving the Ministry of Justice confirmatory rights over every judgment passed, stating that this was a sure way to become master of the insufficient penal measures and legal judgments. Lammers and Bormann consulted and, feeling that Schlegelberger's proposal was insufficient, they determined to hold the matter over until a new Minister of Justice was appointed.

It is perfectly clear that both Bormann and Lammers favored the destruction of the independence of courts, particularly in criminal cases, and that the sentences to be imposed should rest on the uncritical and arbitrary whim of Hitler. The sorry history of this corruption of the judicial process has been set forth in detail in the opinion in the Justice Case,* and it is unnecessary to repeat it here. It is sufficient to say that, after examination of the documents and the testimony offered before this Tribunal, we find that those conclusions are fully substantiated, and we agree with the findings therein made.

On 20 August 1942 the defendant cosigned with Hitler a decree reading as follows (*1964–PS, Pros. Ex. 1587*):

"A strong administration of justice is necessary for the fulfillment of tasks of the great German Reich. Therefore, I com-

* United States *vs.* Josef Altstoetter, et al., Case 3, Volume III, this series.

mission and empower the Reich Minister of Justice to establish a National Socialist administration of justice and to take all necessary measures in accordance with my directives and instructions made in agreement with the Reich Minister and Chief of the Reich Chancellery, and the Leader of the Party Chancellery. He can hereby deviate from any existing law."

Thierack became the new Minister of Justice, and on 27 August 1942 Bormann issued a circular announcing Thierack's appointment, and also that the latter had been appointed Chief of the National Socialist Jurisprudence League and President of the Academy for German Law; and that by these appointments Hitler had united the highest offices in the field of judicial administration of Party and state in the hands of Thierack, and by special decree had empowered the new Minister, in agreement with Lammers and himself, to build up a new [National] Socialist administration of justice in accordance with the guilding rules and directions of the Fuehrer; that the task assigned to Party Member Dr. Thierack was, first of all, a political one, and consisted in bringing justice and the judiciary to the National Socialist idea which could only be attained by closest cooperation with the Party; that should there be complaints by the Party members as to the way justice was administered, they should be presented to Bormann so that he could clear up the situation by confidential negotiations with the Ministry of Justice; and if, on discussion, it would seem absolutely necessary that the problem be brought to the Fuehrer, this would be done by Lammers and himself.

Late in 1942 Thierack was given power to remove recalcitrant judges, and this received Lammers's approval, although it appears that he did so with some misgivings and attempted to impose certain limitations on Thierack's authority.

It was by means of this corruption of the courts of justice that Jews and other enemies and opponents of national socialism were deprived of the ordinary and commonly recognized rights to fair trial and received sentences, including that of death, shockingly disproportionate to the offenses committed.

Lammers was a responsible Reich Minister. He was neither a glorified messenger boy nor a notary public certifying the acts of others. We believe Hitler's reason in raising the head of the Reich Chancellery from the position of State Secretary to that of Reich Minister was to relieve himself of much detail work and many decisions, and to place these functions in the hands of the defendant who, as Reich Minister and Chief of the Reich Chancellery, possessed sufficient rank to interpose and exercise judgment and power.

We are not unmindful of the fact, which we have discussed before, that there was a constant, bitter, and persistent contest between the various chiefs of the Nazi regime to maintain what power they had and to increase it as far as they could, and it is likewise clear that at times the star of one man would rise and that of another would sink, perhaps only to rise again. Dictators have few friends and are notoriously fickle in their ways, but Lammers climbed to power, sought power, and maintained power as long as he could; and he exercised that power to implement Hitler's designs and to maintain himself in Hitler's good graces.

Defendant is, and we find him, guilty under count five of the indictment.

MEISSNER

From 1923 on the defendant Meissner was State Secretary and Chief of the Office of the Reich President. In 1934 a change in name occurred and he was thereafter known as Chief of the Presidential Chancellery. In 1937 he received the title of State Minister with the rank of a Reich Minister. He was never a member of the Party. One of his functions was to deal with petitions and pleas for clemency and present them to Hitler.

Paragraph 41 of the indictment contains allegations of a specific nature against Meissner, namely, his handling of pleas of clemency to be submitted to Hitler. The evidence deals with this subject and also the transfer of persons convicted in the German criminal courts and under sentence, or whose cases were pending trial, to the Gestapo, where they were murdered.

The documents offered against him are to be largely found in books 74 and 74–A of the prosecution, the latter being a rebuttal book.

On 3 May 1940 von Neurath reported (*NG–3279, Pros. Ex. 1834*) that a Czech national, presumably a member of the resistance movement, in attempting to avoid arrest while engaged in putting up posters, shot and killed a German and fired at three German soldiers who pursued him; that he had been tried before a Special Court, that a death sentence was expected, and requested that Hitler waive the right of pardon.

Meissner transmitted the letter to Hitler through Bormann with the statement that if he did not receive any other instructions by 8 May 1940 he would inform von Neurath that the right of pardon had been waived. Bormann returned von Neurath's telegram with the notation that "the Fuehrer agrees."

The prosecution does not suggest that the statements made in von Neurath's telegram are not true. If so, the acts, under any

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system of law, would be punishable, and it cannot be said that a death penalty would be unjustified.

While it is unusual for an executive to refuse to receive and consider pleas for pardon and clemency, he is not legally bound to so do. In the absence, thereof, of other evidence that the man was not guilty of an offense punishable by death, it cannot be said that Meissner's failure to recommend to Hitler that von Neurath's request be denied constitutes a crime against humanity within the meaning of Control Council Law No. 10.

Weiske affair (*The Tiergarten-Tattersall* [*Hippodrome*]).—The prosecution offered evidence that Meissner, for the purpose of obtaining Weiske's interest in the Berlin Hippodrome and its facilities, and to turn it over to one Esche or a corporation in which both Meissner and Esche became interested, caused Weiske to be arrested by the Gestapo and threatened with imprisonment in a concentration camp unless he should consent to the transaction and that, by reason of this arrest and these threats, Weiske, under duress, disposed of his property at a price far below its actual value.

There is no evidence, however, that the alleged conduct was in furtherance of or in connection with crimes against peace or war crimes. The transaction, whatever it may have been, was purely personal, between Meissner and Esche on the one hand, and Weiske on the other. It is therefore not a crime cognizable by this Tribunal. If Meissner was wrong, or if Meissner committed any crime in the matter, the case is one for the German courts. We make no finding and express no opinion as to the merits of the charge, as to do so might possibly prejudice a proper determination by the court having proper jurisdiction.

Luftglas (*sometimes referred to as Luftgas*)*.—On 20 October 1941 a Berlin newspaper contained an item that a Polish Jew, Luftgas, had been sentenced to 2½ years in prison for having hoarded 65,000 eggs.

On 25 October Lammers wrote to Schlegelberger, acting as Minister of Justice, that Hitler wished the defendant Luftgas *sentenced to death,* requesting him to see to it and to notify Lammers when this had been done so that he might inform Hitler. He also wrote Schwab, Hitler's adjutant, informing him of the communication to Schlegelberger. On 29 October Schlegelberger replied that in accordance with the Fuehrer order of 24 October, transmitted to him by the State Minister and Chief of the Presi-

* For further information concerning this incident see Document NG-287, Prosecution Exhibit 88 reproduced in section V C 2 of the Justice case (United States *vs.* Josef Altstoetter, et al.), Volume III, this series.

dential Chancellery (Meissner), he had handed Luftgas over to the Gestapo *for the purpose of execution.*

Schlegelberger testified in the Justice Case that the Fuehrer order was given to him on 24 October through the usual channels of the Presidential Chancellery.

On 24 March 1948 he gave an affidavit on behalf of Meissner that he could not "exclude the possibility that the information with respect to this transfer was not given by Dr. Meissner, as stated in the letter of 29 October 1941, but was given by another office."

On 28 April 1948 he gave an affidavit on behalf of Lammers and said (*Lammers 75, Lammers Ex. 38*) :

> "After further investigation, I cannot entirely exclude the possibility that the order was not delivered by Dr. Meissner, but by another office, that is, the office of the Fuehrer's adjutant."

The witness Flicker, called on behalf of Lammers, testified that inasmuch as Schlegelberger's letter, in the usual office routine, went through several departments including the legal department and that of the State Secretary, it was highly improbable that the mistake would be made of confusing the Presidential Chancellery with the Reich Chancellery or with Hitler's adjutant.

Meissner denies having had any knowledge or taking any part in this affair. The extremely guarded statements of Schlegelberger do not actually contradict his letter or his testimony which he gave in the Justice Case, and we deem it more likely that as stated in his letter to Lammers and his testimony, he received the Fuehrer order from Meissner rather than from the Fuehrer's adjutant. The Fuehrer order was based on a newspaper article, and without the slightest investigation by either Hitler or Meissner, and in the face of a substantial sentence given by a court which had tried the case and presumably had knowledge of the facts, handing the victims over to the Gestapo to be murdered was in clear violation of all law.

Other transfers to the Gestapo.—The record is clear, moreover, that in a large number of other cases certain persons who had been imprisoned for offenses or whose cases were pending trial before the courts, were transferred by the Ministry of Justice to the Gestapo. These cases occurred when Hitler, quite evidently without any investigation of the facts and based almost entirely upon what he read in the newspapers, concluded that a sentence was too light or that a trial before the courts would be too slow. In some cases the order included, and in others omitted, the words "to be shot" or "for execution."

That Meissner knew that these transfers meant the death of these persons concerned, we have no doubt. It is clear that he did not protest such orders or object to transmitting them. His excuse was that it would have done no good.

Some of the victims were Poles or Jews, and others were German nationals. All these cases arose during the war and some involved merely critical remarks of Hitler and his Nazi regime or offenses said to be aggravated because of war conditions.

Meissner knew that the Ministry of Justice had control of the custody of these persons, and only it had authority to transfer them to any other agency. That he also knew that these transfers meant death, we have no doubt whatsoever. He took a consenting, even though a minor, part in these crimes.

Blitz executions.—Meissner's part in the so-called Blitz executions consists of the following: The only instance as to which there is any evidence occurred in December 1938 and involved a man who, while an inmate of the Buchenwald concentration camp, had killed an SS man. There is no evidence to indicate that this case had anything to do with the preparation, planning, or initiating of aggressive war. This Tribunal therefore has no jurisdiction over any crime arising from this incident.

Nach und Nebel (night and fog) terror system.—Meissner's only participation in this matter is a draft of a letter dated 14 June 1944 which Thierack proposed to send to Bormann but which was never transmitted. Therein, he stated that Meissner in submitting Hitler's order granting reprieve to certain women prisoners from occupied countries sentenced under Nacht und Nebel decrees, had instructed Thierack, who was then Minister of Justice, that Hitler's decision was not to be made public, thus leaving the condemned persons in suspense for an indefinite period as to whether or not the death sentence would be carried out. Meissner does not deny that he gave Thierack Hitler's instruction as above set forth. To permit one sentenced to death to remain for months or even years without knowledge of his reprieve and under the intolerable anxiety and mental stress of not knowing whether the next day would be his last day on earth is a trait typical of the sadism of the Nazi regime, and if anything could be considered a crime against humanity, such a practice is.

Meissner's defense and facts in mitigation.—Meissner was never a member of the Party, and up to the last moment he opposed Hitler's being made Chancellor. The von Papen affidavit that Meissner made his peace with Hitler, via Goering, because of financial scandals in which he was involved, is based on hearsay and without proof. His main functions as Chief of the Presidential Chancellery were those of protocol, taking care of honorary

awards, making arrangements for and acting as escort for visiting foreign dignitaries, and matters relating to executive clemency. He was not a policy maker and had little or no executive power. He never enjoyed the favor of the Party and was looked upon with grave suspicion and dislike by its heads. He was kept in office by Hitler because of his ready knowledge of protocol and ceremony, of which the latter was wholly ignorant, and his long acquaintance with leading domestic and foreign personalities.

It is clearly established that insofar and as often as he could, he used his position to prevent or to soften the harsh measures of the man he served, sometimes at considerable risk to himself. He may have remained in office under Hitler because of vanity, weakness, and for financial security. There is no evidence that he originated or implemented any crimes against humanity, beyond what has been heretofore termed as such, and even there his part was hardly more than that of a messenger. While in so doing he played an unenviable role and one which a stronger character more alive to higher values would have rejected, it is doubtful that it constitutes criminality.

We find the defendant Meissner not guilty.

PUHL

The defendant Puhl, as the leading executive official of the Reich Bank, is charged with having directed and supervised the execution of an agreement between Funk and Himmler for the receipt, classification, deposit, conversion, and disposal of properties taken by the SS from victims exterminated in concentration camps. These properties, totaling millions of reichsmarks in value, included, among other things, gold teeth and fillings, spectacle frames, rings, jewelry, and watches. To insure secrecy, the deliveries from the SS were credited to a fictitious account and the transaction was given a code name. The proceeds were credited to the account of the Reich Treasury under the defendant Schwerin von Krosigk.

Puhl's entire career has been that of a banker. He was first employed in the Reich Bank in 1913, and, except for service in the army during the First World War, he remained in that organization. He became a director in 1929 and was a senior director in 1932; he was appointed as vice president on 8 August 1940 and remained so until the German surrender in 1945. From 1935 to 1945 he was a member of the Aufsichtsrat (which is, roughly, the supervising board as distinguished from the executive board) of the German Gold Discount Bank. He joined the Nazi Party as early as 1938 although his membership record gives the year

as 1937. The defendant asserts that his membership record was antedated.

He served under Schacht, who was acquitted, as well as Funk, who was convicted by the first International Military Tribunal, during their respective periods as president of the bank.

The primary function of the Reich Bank was that of issuing notes; it also had the power to regulate the movement of currency and money transactions, internally as well as abroad, and to insure that the available funds of the German economic system were utilized for the common good and in the interest of national economy; it was under the direct authority of the Fuehrer; it was a public corporate body under corporate law which had a capital of 150,000,000 reichsmarks; and its presidents and directors were under the supervision and control of Hitler, who appointed and could, at will, discharge them. Such was the legal position of the bank under the Reich Bank Law of 1939, which covers the period with which we are here concerned.

On 11 February 1939 Puhl was appointed Funk's deputy for all business in the latter's absence, with the same power to make decisions which Funk possessed under the Reich Bank Law, a position which was superior to that of any other official of the bank. He was the managing vice president, while Lange, the other vice president, was in charge of personnel matters and of safeguarding National Socialist principles in the bank.

Puhl had the comparative rank of a state secretary. In addition to being a member of the Aufsichtsrat of the Gold Discount Bank, in 1944 he became deputy president. This bank was owned and wholly controlled by the Reich Bank.

Action Reinhardt.—No chapter in the law and record of crimes committed during the history of the Nazi regime is so revolting and horrible as the coldly calculated extermination of Jews. Not content with depriving them of the opportunity inherent in all human beings to study, to practice professions, to engage in business in accordance with the individual's nature and talents, they were deprived of their rights of citizenship, subject to senseless degradations, humiliations, and insults, their property in many instances destroyed by Party organized mobs, and finally stolen from them under the euphonius term of "confiscations"; they were deported to the Gaue in the East and finally to extermination camps where they were slaughtered by the million through starvation, shooting, and finally by mass extermination in the gas chambers of Auschwitz and Maidenek, where men and women, girls and youths, the tottering grandfather and the babe in arms, met the same fate. But the Nazi government was not content with this. There were large financial gains to be derived from

wholesale murder which could be and were used to wage Germany's wars of aggression. Currency, coins, securities, jewelry, gold watches, gold spectacles, clothing from their bodies, were carefully and systematically collected; the hair was shorn from the heads of the women; and finally the gold from the teeth of the corpses was meticulously removed. The best of the clothing was used to cover the bodies of the members of the master race, the hair for mattresses on which to lay their heads, and the coins, bank notes, jewelry, and gold stored in vaults of the Reich Bank, sold through Berlin pawn shops by the Reich Bank, or sent by the Reich Bank to be melted into bullion.

The defendant contends that stealing the personal property of Jews and other concentration camp inmates is not a crime against humanity. But under the circumstances which we have here related, this plea must be and is rejected. What was done was done pursuant to a governmental policy, and the thefts were part of a program of extermination and were one of its objectives. It would be a strange doctrine indeed, if, where part of the plan and one of the objectives of murder was to obtain the property of the victim, even to the extent of using the hair from his head and the gold of his mouth, he who knowingly took part in disposing of the loot must be exonerated and held not guilty as a participant in the murder plan. Without doubt all such acts are crimes against humanity and he who participates or plays a consenting part therein is guilty of a crime against humanity. The only question we have to decide is whether the defendant Puhl was such a consenting participant as to render him liable to conviction and punishment.

As early as 26 September 1942 Frank, SS Brigadefuehrer and Brigadier General in the Waffen SS, by order of Himmler (SS WVHA), issued instructions to the Chief of the SS garrison administration at Lublin and the chief of the administration at the Auschwitz concentration camp, prescribing procedure for the disposition of property of executed Jews (*NO–724, Pros. Ex. 1908*)—

a. German Reich Bank notes were to be deposited with the Reich Bank to the credit of the SS Economic and Administrative Main Office.

b. Foreign Exchange, coined and uncoined, rare metals, jewelry, precious and semiprecious stones, pearls, *gold from the teeth,* and scrap gold to be delivered to the Main Office and by it immediately to the Reich Bank.

* * * * * * *

h. Gold frames of spectacles to be handed in with the rare metals.

Albert Thoms, an employee of the Reich Bank, deposed and later testified that, by a decree of 21 February 1939, all Jews were required to deliver personal property to the governmental authorities, and coins and gold bars resulting therefrom were to be delivered to the Reich Bank; that in the summer of 1942 he was called into the department of Director Frommknecht and informed that the bank was going to handle a special transaction of which the latter knew little, but that all the details of which were familiar to Puhl, who wanted to see the witness; that he went to Puhl's office who explained that the bank was going to act as custodian of the SS for the reception and disposition of deposits which would include not only gold, silver, and foreign currency with which the bank usually dealt, but other kinds of property, such as jewelry, and that a way must be found to dispose of them; that he suggested to Puhl that the latter items be transmitted to the Reichshauptkasse (pawn shop) [Official Pawn Office] or that they be given by Himmler directly to the pawn shop in order that the bank would have nothing to do with the matter; that Puhl said this was out of the question and that the bank must arrange for a procedure in order to *keep the whole thing secret.* This conversation was within 2 weeks of the first delivery which was made in August 1942.

Thoms was further instructed by Puhl not to discuss the matter with anybody, that it was highly secret, and it was forbidden to speak about it. He was further instructed to get in touch with Brigadefuehrer Frank and Obergruppenfuehrer Wolff (the same Wolff who appears in this case so often as an affiant in behalf of the defense), for information; that he telephoned Frank and was told that the deliveries were to be made by truck and that they would be in charge of an SS man, Melmer; that after discussions it was agreed that Melmer should not appear in SS uniform but in civilian clothes, and that he was to receive a conditional receipt for the property; that Thoms would be later informed of the account to which the proceeds of the items were to be accredited; that although Melmer appeared in civilian clothes, there were two SS men on guard and most of the people in the pawn shops and in Thoms' office and in the bank knew about the SS deliveries. He says that the goods were sorted, handled, and disposed of in the appropriate departments of the bank—stocks, securities, and bonds to one department, and coins, gold, and jewelry to the precious metal department. On delivery a short statement of the goods was made and signed by the bank. Later the contents were itemized in detail and a final receipt given in detail; that on the occasion of the first delivery Melmer told him to credit the proceeds of the account to Max Heiliger; that he confirmed this

with an official of the Ministry of Finance; that a few months later Puhl inquired how the Melmer deliveries were coming along and suggested that they might soon be over, but that he informed Puhl that it seemed as though they were growing larger.

The source of these items was known from the fact that the register stamp "Lublin" appeared on packages of some of the bills and some items carried the stamp of Auschwitz, both sites of concentration camps. This was early in 1943.

In November 1942, being the tenth delivery made, dental gold appeared and eventually this item became unusually great. The Berlin pawn shop [office] disposed of the jewelry for the bank, and the proceeds were credited to "Max Heiliger." The witness did not know how the savings books were cashed in, the first of which was delivered on 24 April 1943.

Thoms was called as a witness in the International Military Tribunal, confirmed his affidavit, and further testified that he kept Puhl advised of these transactions and of the kinds of items, including dental gold and wedding rings that the bank was receiving; that four or five people were employed at the bank to sort and classify the material, which action was carried on in the corridor of the vaults and much of the material lay quite openly on the table; that all persons involved were under strict instructions that this secret matter must not be talked about even with one's own colleagues, and that this secrecy was not ordinary secrecy that attended bank transactions; that he had seen the material shown in evidence and it was typical of the Melmer deliveries. The witness further testified that there were more than seventy deliveries made by the SS to the bank.

On cross-examination he testified that the name Melmer was given for this deposit, because of the specific direction from Puhl that the matter was a particularly secret affair; that the gold teeth were sent to the Prussian State Mint where they were melted down into gold, and the bullion delivered to the Reich Bank. He further testified that when the articles were sorted and classified at the bank they were put in bags with the word "Reichsbank" printed on same.

On 3 May 1946 the defendant himself was interrogated and made an affidavit that in the summer of 1942 Funk had a conversation with him and Friedrich Wilhelm, another member of the board of directors, and said that he had made an arrangement with Himmler to have the [Reich] Bank receive on safe deposit gold and jewels for the SS, and that Funk directed him to work out the arrangements with Pohl, head of the economic section of the SS in charge of the economic aspects of the concentration camp program; that he inquired of Funk the source of the gold,

jewelry, and bank notes that were to be turned over and Funk replied that it was confiscated property from the Eastern Occupied Territory and told him to ask no further questions; that he protested against the Reich Bank handling the material but was told to go ahead and to keep the matter absolutely secret.

He thereupon made arrangements with one of the officials in the cash and vault department to receive the material, and himself reported the matter to the board of directors of the bank at its next meeting; that Pohl, on the day of the defendant's conversation with Funk, telephoned him and asked if he had been informed of the transaction, but Puhl refused to discuss the matter over the telephone, whereupon Pohl came to see him and said that the SS had some jewelry to deliver to the bank for safekeeping and arrangements had been made for delivery, starting sometime in August 1942, and continuing over the following years; that the material deposited by the SS included jewelry, watches, eyeglass frames, dental gold, and other gold items in great abundance from Jews, concentration camp victims, and other persons; that this was brought to his knowledge by SS personnel who attempted to convert this material into cash and who obtained, in this connection, the assistance of the bank personnel with Funk's approval and knowledge; that he had been informed by Funk that Himmler and Schwerin von Krosigk, the Minister of Finance, had reached an agreement that the gold and similar material was to be deposited for the account of the Reich, and that the proceeds resulting from their sale should be credited to the Reich Treasury; that from time to time he visited the vaults in the bank and observed what was in storage.

Puhl explains this affidavit on the ground that he was ill at the time and confused, and offered as corroboration the testimony of Binswanger, who was then one of the internment camp physicians. The latter's testimony should be received with great caution as it is clear that he did not tell the truth with respect to his rank in connection with the SS. Moreover, his statements as to the physical findings from his examination of Puhl do not reveal any facts which would affect either Puhl's mind or memory. The defendant is a man of vast business experience, wide culture, and high intelligence. There is no evidence that he was under duress, other than the fact that he was then confined in an internment camp. It is not claimed that he was threatened by the interrogators, and the evidence clearly shows that he was not. The affidavit is replete with details which only he could have known and which could not have been supplied by anyone else. We believe that the affidavit relates the facts.

In the bank's files is a memorandum dated 31 March 1944 which recites that, in accordance with an oral, confidential agreement between Puhl and the chief of one of Berlin's public offices, the Reich Bank took over the selling of local and foreign currencies, gold and silver coins, precious metals, securities, jewels, watches, diamonds, and other objects which were to be processed under the code name Melmer; that a large number had been turned over to the Municipal Pawn Shop for utilization; that on 29 March 1944 the pawn shop refused further acceptance and declined to process items already in their possession; that the question of uniform utilization was important, not only because the bank should be given the opportunity to sell unprocessed jewels, etc., from the Melmer deliveries as it had been before, but also because its equivalent belonged to the Reich and if the pawn shop sold the articles above the world-wide gross price the surplus went to the benefit of the Reich; that through sales to foreign countries a considerable amount of foreign currency must be acquired, and that among the good still in the possession of the pawn shop were diamonds to the amount of 35,000 carats, and small rose diamonds of very high value.

There is another communication in this document of 14 September 1943 from the Berlin Municipal Pawn Shop to the Reich Bank likewise dealing with the utilization of this property.

Karl Wilhelm, a former director of the bank, gave an affidavit (*NID–14462, Pros. Ex. 1916*) that in 1942 Puhl told him that SS Obergruppenfuehrer Pohl had visited him and stated that he desired that the gold and jewelry deposits then in the cellar of an SS barracks should be put under the care of the Reich Bank; that Wilhelm told Puhl that those things didn't concern him and warned Puhl against taking such deposits, with the words, "They will kick back against the Reich Bank some day," whereupon Puhl replied "You are right, it is none of your business. I just wanted to inform you of these deposits. I will deal with this matter alone." Puhl showed no reluctance but approved the project.

Puhl denies the matters deposed by Wilhelm, but on the second day of November 1946 he gave a statement that he considered Wilhelm to be thoroughly reliable and that complete faith could be put into the statements he made, and that he never considered Wilhelm was sympathetic to the Nazi program.

Walter Bayrhoffer gave an affidavit (*NID–14444, Pros. Ex. 1918*) in which he stated that he was a director of the Reich Bank and a member of the Aufsichtsrat of the Gold Discount Bank; that at the end of 1942 Frommknecht told him that, without his knowledge or that of the affiant, jewels and valuables of the SS

had been deposited with the bank; that Frommknecht was somewhat annoyed that these deposits had been handled by Puhl, since cash transactions were actually the responsibility of Bayrhoffer's department; that Frommknecht informed him that the matter was classified as secret and top secret; and that he himself had misgivings about the transaction because it seemed to be outside the competency of the bank.

On 15 July 1946 Oswald Pohl, Chief of the Economic and Administration Main Office of the SS (WVHA), gave an affidavit deposing, among other things, that in the year 1941 or 1942—after larger quantities of articles of value such as jewelry, gold rings, gold fillings, spectacles, etc., had been collected in the extermination camps—Himmler ordered him to deliver these things to the Reich Bank, explaining that he had already entered into the negotiations concerning the matter with the bank and Funk; that as a result of this agreement he discussed the manner of delivery with the defendant Puhl and in this conversation no doubt remained that the objects to be delivered were the jewelry and valuables of concentration camp inmates, especially Jews who had been killed in extermination camps. There was a gigantic quantity of valuables thereafter delivered which continued for months and years. He further stated that he saw a part of these valuables when Funk and Puhl invited him to inspect the vaults, and thereafter to dinner (this took place in 1941 or 1942), and then that Puhl took them to the vaults of the Reich Bank, showed them gold bars and also various trunks of objects, taken from concentration camps, were opened.

Pohl gave a subsequent affidavit on 2 April 1947 which substantiates many of the details heretofore mentioned.

Pohl was called as a witness in this case for cross-examination, and in a measure attempted to repudiate the affidavits which he had given, an analysis of which will be hereafter made. Likewise both Wilhelm and Thoms were called for cross-examination and their testimony will be similarly treated.

When Puhl testified before the International Military Tribunal, he confirmed the statements of his affidavit of 3 May 1946, stating specifically that the statements in the affidavit were correct. Thereafter he recanted, stating that he did not know that there was dental gold or gold spectacle frames in the loot. August Frank of the SS heretofore mentioned testified in the Pohl case* that the conferences between Pohl and the defendant Puhl took place in July 1942, having been preceded by a conference between Himmler and Funk and between Himmler and the defendant Schwerin von Krosigk; that these deposits were not deposits of

* United States *vs.* Oswald Pohl, et al., Case 4, Volume V, this series.

the SS and for its benefit, but were for the benefit of the Reich; that the foreign exchange was immediately utilized by the Reich Bank and its countervalue credited by the bank to a special account with the Reich Minister of Finance. This account was called the Max Heiliger account.

On 26 May 1948 Albert Thoms gave an affidavit in which he testified that there were seventy-six separate deliveries by the SS to the Reich Bank which were listed under the name "Melmer"; that of these a part was not utilized but evacuated to the salt mines in Merkers because of war conditions. He identified the receipt book of the Metal Purchasing Office of the Reich Bank, which is the record of the smelting of the gold. The remaining Melmer deliveries in 207 containers in which were stored gold, foreign exchange, jewelry and precious stones, pearls, and dental gold, were likewise sent to Merkers. Attached to his affidavit are photostats of pages 14 and 15 of the Reich Bank receipt book, and they relate to 21 deliveries which commenced with the fortieth and ended with the seventy-sixth.

Page 15 relates to eleven deliveries of which the twenty-sixth was the first and the seventy-second the last. Also, as a part of this exhibit, is a memorandum of 24 November 1944 from the Reich Bank to the mint, directing it to melt down something over 100,000 kilograms of silver and gold (1 kilogram is the approximate equivalent of 2 pounds), a substantial portion of which was dental gold.

While we have little doubt that the articles shown in the film (*US–845 IMT, Pros. Ex. 1919*) were delivered by the [United States] Army to the Reich Bank branch in Frankfurt and were part of the loot which the Reich Bank had stored in the salt mines at Merkers, the chain of proof is not entirely complete. We shall therefore disregard the film, but the facts are proved independently by the evidence which we have heretofore outlined.

The defendant Puhl asserts that the Reich Bank was by law compelled to accept this loot, particularly with respect to the gold, silver, and currency, and quotes article 15 of the Reich Bank Law (*NO. 45, Ex. No. 45*) of 15 June 1939.

There is nothing in this section which can be construed to require the bank so to do. Article 15 merely provides that the bank must effect all banking operations for the government *"insofar as they are within its competence in accordance with the provisions of the present law"*; it is also required to act as intermediary for all payments by the financial establishments of the Reich, the Gaue, the provinces and the communes, and the association of communes. The receipt, realization, and disposition of stolen goods can hardly constitute a banking operation, nor is it

to be presumed that when the law was drafted it had reference to any transaction such as we are here discussing.

Article 14 of the same law contains the clause that the bank is required to purchase bar gold at its Berlin headquarters at a fixed rate. This, however, only means that if and when the bank purchases gold it must do so at the specified rate.

The legal opinion of Hans-Joachim Caesar, a jurist for the Reich Bank, cites both articles and the "pertinent provisions of the foreign currency laws," and "according to these provisions all the gold and foreign currency had to be turned over to the Reich Bank," and as a result the Reich Bank could not reject gold and foreign currency confiscated by order of the Reich.

We reject this contention. If it had been the purpose of the law to include therein property stolen from the inhabitants of occupied territories or from those of German nationals, pursuant to an execution of aggressive war, it was void as a breach of international law and affords no defense. We do not assume and we do not believe that any such purpose existed at the time the Reich Bank Law or the Foreign Currency Regulations were promulgated. That this was not looked upon as an ordinary transaction within the scope of its corporate purposes or official functions by the Reich Bank officials, including Puhl, is evidenced by the extreme secrecy with which the transaction was handled, the fact that the account was credited in the first instance to a fictitious name, Max Heiliger, and the contemporaneous misgivings expressed by officials and employees of the bank at the time.

Our views are confirmed by the testimony of Karl Friedrich Wilhelm, namely, that the bank was under no obligation to accept gold or foreign currency, but it was the duty of holders to offer it. Nor was it bound to accept and dispose of jewels or unrefined gold or act in the capacity of a second-hand or antique dealer.

Puhl testifies that he first learned of the transactions in question from Funk, in accordance with an agreement made between Himmler and Funk. This was in the summer of 1942. He further testifies that Funk told him that Himmler intended to deliver incoming gold and foreign currency into the bank because of the legal provisions requiring such delivery, and asked him to inform the competent departments to be helpful in fulfilling the formalities concerning the delivery of the stuff. Funk mentioned not only foreign currency and gold, but also some articles of jewelry, but said nothing of gold teeth, gold teeth fillings, spectacle frames, etc.; that Funk stated that these things had been seized or given up in the East and he, Puhl, did not assume that the seizure was in violation of international law; that there was no mention of concentration camps or Jews. Funk told him not

to ask any more questions; that his protests about the Reich Bank taking over the property were not because he thought they were illegally acquired objects, but because he did not desire to have any dealings with the SS. He remembers the call which Pohl made and states that it was very short and that all Pohl told him was that he was the delivering agency for gold and silver currency collected within the framework of the SS scheme, and emphasized that this was property belonging to the Reich.

Pohl did, however, mention that there might be some jewelry and asked the Reich Bank to pass it on to the competent pawnbroker's agency; that as a result of his conversation with Pohl, he informed Frommknecht. He denies that he gave Thoms the instructions or heard the conversation mentioned in the latter's affidavit, but merely said so far as property other than gold and other foreign currency was concerned, it should be passed on to the competent pawnbroker's house. He admitted that he may have said that the matter should be treated in a confidential way, but that applied to all banking transactions, and that Pohl had talked of secrecy and made a lot of fuss about everything, and he may have told Thoms something to that extent.

He denies, however, that the matter was to be treated as a top secret matter. He denies Wilhelm's affidavit and testimony that he had informed the latter that he (Puhl), would handle the matter himself. He claims that these matters were never discussed in the meetings of the directors, and that he never received a report from the subordinates in connection with these deposits; that he had never made any inquiry of Thoms as to the status or progress of the Melmer deliveries, and that he was never notified that gold teeth were supposed to have shown up in connection with the deposits or savings bank books, or 12 kilograms of pearls; that if Thoms had ever mentioned these matters he certainly would have done something against it; that he never saw, in the Reich Bank vaults, items such as were shown in the film and that he never knew that that class of items were ever turned in by the SS, and does not believe it possible that they could have been turned in to the Reich Bank.

However, the testimony of Thoms and the records of the bank to which he heretofore referred show that the defendant is entirely mistaken with respect to this last statement. He remembers only one visit of Pohl to the bank vaults, namely, on 27 May 1941, before these deposits were being made, and remembers one luncheon with Pohl immediately after he visited the vaults.

He claims that at the time his affidavit was taken, he was and had been ill; that he was at that time still bedridden and unable to grasp the sense of the individual statements.

The witness Oswald Pohl was administration chief of the SS from 1934 to 1945. He was tried and condemned to death. He was called for cross-examination with respect to [Prosecution] Exhibits 3477, 2826, 2862, 2827, 2865 [Documents 4045–PS, NI–399, NI–470, NI–382, NID–14605 respectively]. He says that while a prisoner of the British he was badly mistreated, although he makes no claim that he was mistreated while in Nuernberg, either before, during, or after his interrogations here. He attempted to state that he did not know that the material came from concentration camps, or from extermination camps and dead Jews, or that it contained such items as gold rings, gold fillings, glasses, and gold watches.

August Frank testified, in the Oswald Pohl case, that as early as 8 October 1942 he had informed Himmler about this dental gold and suggested that further collections be sent to the Reich Bank, and further, that he knew that much of it came from concentration camps. We deem it highly unlikely that Pohl would not have at least as much definite information as his deputy, Frank.

We have carefully reviewed Pohl's testimony before a commission of this Tribunal. It is our opinion that he gave false oral testimony in an attempt to exonerate himself as well as defendant Puhl. Certainly Pohl's cross-examination shows that he would go to any lengths, wholly without regard to the facts, in order to avoid the effect of the affidavits which he had given.

From the records we draw and make the following findings of fact:

That Puhl was the managing director and vice president of the Bank, and that in Funk's absence he exercised all the powers of Funk;

That Funk was seldom in the bank and comparatively seldom exercised his powers as president;

That Puhl, at the time he received the direction from Funk and after he talked to Pohl, knew that what was to be received and disposed of was stolen property and loot taken from the inmates of concentration camps.

We do not believe that at that time he was informed that the grisly dental gold and wedding rings were part of it. However, we think it is fairly established by the record that long before the deliveries were completed he was informed of this. His part in this transaction was not that of a mere messenger or businessman. He went beyond the ordinary range of his duties to give directions that the matter be handled secretly by the appropriate departments of the bank. It is to be said in his favor that he neither originated the matter and that it was probably repugnant

to him. He had no part in the actual extermination of Jews and other concentration camp inmates, and we have no doubt that he would not, even under orders, have participated in that part of the program.

But without doubt he was a consenting participant in part of the execution of the entire plan, although his participation was not a major one.

We find him guilty under count five.

RASCHE

The defendant Rasche is a banker by profession, and after many years of banking experience in the Rhineland he joined the Dresdner Bank, became a member and finally the spokesman for its Vorstand. He was one of the most able and active executive officers of the bank.

The evidence clearly establishes that the Dresdner Bank loaned very large sums of money to various SS enterprises which employed large numbers of inmates of concentration camps, and also to Reich enterprises and agencies engaged in the so-called resettlement programs.

It is unnecessary to recapitulate the evidence in this case or the findings of others of these Tribunals to the unlawful nature of these enterprises.

Prosecution Exhibit 2825 [Document NI–10120] is a draft of a letter of recommendation which Rasche prepared or caused to be prepared for the signature of SS Gruppenfuehrer Pohl, which contains the statement:

> "Dr. Rasche is an old fighter for the Baltikum, and as a member of the delegation of the Reich Leader SS (Himmler) he also participated in the decisive measures concerning resettlement."

The defense that Pohl did not sign this letter and that it was never used is of no materiality, as they are Rasche's own words praising himself and not those of Pohl.

The record, however, does not disclose that Rasche was ever a member of any delegation of the Reich Leader SS, nor what the delegation did, if it ever existed, or what the decisive measures consisted of; nor are we able, from other evidence, to determine any relationship with Himmler or the SS from which any conclusive inference can be drawn.

Rasche was a member of Himmler's Circle of Friends, and the [Dresdner] Bank, with his knowledge, acquiescence, and approval, even in part at his insistence, made large annual contributions to

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a fund placed at Himmler's personal disposal. There is no evidence, however, that matters relating to the resettlement program were ever discussed or acted upon in the meetings of this circle, or that it was in any way a policy-making body. Nor is there any evidence that Rasche knew that any part of the fund to which the bank made contributions was intended to be or was ever used by Himmler for any unlawful purposes.

His participation in the loans made by the Dresdner Bank to various SS enterprises which employed slave labor and to those engaged in the resettlement program presents a more difficult problem.

The defendant is a banker and businessman of long experience and is possessed of a keen and active mind. Bankers do not approve or make loans in the number and amount made by the Dresdner Bank without ascertaining, having, or obtaining information or knowledge as to the purpose for which the loan is sought, and how it is to be used. It is inconceivable to us that the defendant did not possess that knowledge, and we find that he did.

The real question is, is it a crime to make a loan, knowing or having good reason to believe that the borrower will us the funds in financing enterprises which are employed in using labor in violation of either national or international law? Does he stand in any different position than one who sells supplies or raw materials to a builder building a house, knowing that the structure will be used for an unlawful purpose? A bank sells money or credit in the same manner as the merchandiser of any other commodity. It does not become a partner in enterprise, and the interest charged is merely the gross profit which the bank realizes from the transaction, out of which it must deduct its business costs, and from which it hopes to realize a net profit. Loans or sale of commodities to be used in an unlawful enterprise may well be condemned from a moral standpoint and reflect no credit on the part of the lender or seller in either case, but the transaction can hardly be said to be a crime. Our duty is to try and punish those guilty of violating international law, and we are not prepared to state that such loans constitute a violation of that law, nor has our attention been drawn to any ruling to the contrary.

The defendant Rasche should be and is found not guilty under count five.

RITTER

The defendant Ritter, now in his 66th year, entered the Foreign Office in 1922 after a career as a civil servant in various

other governmental agencies, which commenced in 1909. He was a recognized expert in matters of commerce and economics, and represented the Weimar Republic in negotiating and drafting many commercial agreements, and in questions of reparations and economic matters arising within the League of Nations. In these capacities he exerted a significant political influence. He became Chief of the Commercial Policy Division of the Foreign Office and remained there until 1937 when he was appointed Ambassador to Brazil.

As Ambassador he received a greatly increased compensation and thereby became entitled to the rank of State Secretary. Prior to his appointment he claims that he was less and less consulted by von Neurath, then head of the Foreign Office, and that his appointment to Brazil was not a promotion but rather a means of "putting him on the shelf."

In 1938 while Ambassador to Brazil he received an unsolicited invitation to join the Party and testifies that he was faced with the dilemma of so doing or falling into complete disfavor which might result in his inability to return to Germany, and in any event would have injured his career. He thereupon joined the Party.

Ritter was recalled in 1938 and on his return attempted to retire, but was put off by von Ribbentrop until the outbreak of the war, notwithstanding the fact that von Neurath had promised him that he might do so. He received only occasional assignments in the Foreign Office upon his return from Brazil, among which were the negotiations leading up to the commercial agreement with Russia after the conclusion, in August 1939, of the non-aggression pact between Germany and that country.

In October 1940 he was appointed by von Ribbentrop as liaison officer between the Foreign Office and the OKW (which corresponds to the General Staff of the German Armed Forces), a position which he retained until the end of January 1945, when he became ill.

While an attempt has been made to minimize the importance of his functions and the influence which he could exert, we cannot accept this *in toto*. The functions of a liaison official or agent between two such important departments of a government as the Foreign Office and the General Staff are too well known and recognized, and among them is the duty to inform himself of the purposes, plans, and activities of the department to which he is assigned, report them to his superior, give advice with respect thereto, negotiate on the latter's behalf with the agencies to which he is assigned, adjust differences which may arise, and generally implement policies determined by his chief. These are

not the duties of an errand boy or a messenger. They require a high degree of perspicacity, industry, intelligence, tact, and adroitness; and the evidence, including that of the defendant himself, indicates that he possessed and utilized these qualities and performed these functions, hampered, it may be, by the almost psychopathic peculiarities of his chief, von Ribbentrop.

With regard to the fate of the Jews who were deported to the East, and with respect to the policy of the Nazi government toward them, he was under no illusions, although it was quite likely that he had no direct knowledge of the extent, technique, or manner in which the Jewish exterminations were carried out. We shall consider the documents and the testimony which the prosecution contends proves his guilt.

On 24 September 1942 Ritter wrote and signed a memo to be used by Hitler in dealing with Mussolini on varied questions, including that of the Croatian Jews, but here he was only transmitting von Ribbentrop's ideas and did not purport to express his own. Our attention has not been called to any instance where he had any responsibility or took any action respecting this matter.

Danish Jews.—The prosecution contends that Ritter coordinated military and civilian measures for the persecution of Danish Jews, when the civilian forces complained that they could not carry out the deportation without military help. We have examined the exhibits cited in the brief, but while Ritter received information that such measures were under consideration and that the military commander in Denmark objected thereto, and while he was on the distribution list of certain of the documents, the only evidence which the prosecution has presented to show that he took any action with respect to the same is a quotation from his cross-examination, wherein he had denied that he had anything to do with the Jews being taken from Denmark. He was asked the following question (*Tr. p. 12466*):

> "Q. Do you remember that you had to mediate because the official agencies allegedly did not want to support Best properly with intended deportations?
>
> "A. I don't remember such a general activity of mediation, but I remember one particular case—
>
> "Q. That is quite sufficient."

For some reason the prosecution did not see fit, and in fact stopped the defendant from testifying as to what activity was involved in the particular case which he remembered, and the matter was not again discussed. The Tribunal is not informed as to what he did, and the term "mediation" is entirely too indefinite

and subject to too many shades of meaning to be used as evidence of guilt. It might include an attempt to ameliorate rather than to implement the action.

With respect to Denmark the prosecution has failed to prove its case.

Jews in France.—The record discloses that Ritter was informed of the actions against Jews in France and Rumania, but there is no evidence that he participated in them. Knowledge that a crime has been or is about to be committed is not sufficient to warrant a conviction except in those instances where an affirmative duty exists to prevent or object to a course of action. In this instance he had no such duty and he is therefore acquitted with respect to them.

Hungary.—During the course of Germany's persecution of the Jews, several hundred thousand emigrated to Hungary where, although subject to certain restrictive laws, they found, what was to them, a haven of refuge.

While there was a vigorous anti-Semitic movement in Hungary, neither the Regent, Admiral Horthy, nor the Cabinet then in power, showed any desire to follow the pattern laid down by the Nazi government.

To the Third Reich it was, of course, unbearable that Jews in any country within reach of its power or influence, should live the life of free men. Constant effort and pressure were put forth to destroy all opportunity for even a meager existence outside of concentration and slave-labor camps. And this is what they finally brought about in Hungary.

As early as 1943 Hitler had become dissatisfied, not only with the military efforts of the Hungarians and with their lack of vigor in enacting and enforcing anti-Semitic legislation, but became suspicious that Hungary was war weary and desired to make peace. It was determined to obtain the control of the Hungarian Government. Thereupon German Envoy von Jagow was replaced and Veesenmayer, who had no previous diplomatic experience, was put in his place.

Von Ribbentrop detailed Ritter to take charge of Hungarian affairs, and included Veesenmayer's activities at Budapest.

Veesenmayer became Minister and Reich Plenipotentiary to Hungary on or about 19 March 1944. On that day Ritter telephone him giving the following instructions, viz, that on the same day von Jagow should inform Horthy, the Hungarian Regent, that he had been recalled, and would take leave the same morning, then introduce Veesenmayer as the new Minister and Reich Plenipotentiary; that Veesenmayer was to introduce himself and inform Horthy of the new Hitler order concerning Imredy and

others, whom Veesenmayer would name, and whom thereafter he should immediately contact; that none of the Hungarians who were in Klessheim (where conferences between Horthy and Hitler had taken place) were to be arrested, not even Kallay; that in accordance with von Ribbentrop's order, Veesenmayer, until further notice, was to direct all information for von Ribbentrop to Ritter.

On 4 March 1944 Ritter instructed Legation Councillor Vogel to rush-wire all top agencies concerned that Hitler's written authority to Veesenmayer provided "civilian German agencies of any kind which should be activated in Hungary are only to be established with the consent of the Reich Plenipotentiary; that they were subordinate to him and would operate under his directions"; that the establishment of German civilian agencies in Hungary was not intended; and that all proposals pertaining to trips of officials of top Reich agencies with a view of attending to current war efforts in Hungary must be addressed to the Foreign Office, attention Legation Councillor Krieger.

On 19 March 1944 Grote made a memorandum with regard to Operation Margarethe (the seizure of Hungary by German troops), which contains the following language (*NG–5525, Pros. Ex. C–437*):

> "After consultation with Ambassador Ritter, it is superfluous to inform the Rumanian, Croatian, and Slovakian Governments regarding diplomats or submit a request to them."

On 20 March Ritter, by teletype to the Embassy at Budapest, stated that von Ribbentrop requested Veesenmayer to discuss the Kallay affair with Kaltenbrunner, and to arrange to have all exits to the castle watched by the German Security Police with instructions to arrest Kallay if he attempted to leave the castle.

On 23 March 1944 Veesenmayer reported to von Ribbentrop, via Ritter, regarding his instructions to the Security Police to take the necessary steps to arrest Kallay when he left the sanctuary of the Turkish Ministry.

On 25 March 1944 Veesenmayer reported to von Ribbentrop through Ritter, of a conference with Sztojay and members of the Hungarian Cabinet, stating that, among other things, the Jewish question was being tackled energetically and that he had left them in no doubt that the Reich government was at present still skeptical and could only be convinced by practical deeds, and the more quickly and energetically and thoroughly reforms were carried out the better was Veesenmayer's chance to convince the Reich that the new government was beginning to get ready for an alliance.

Veesenmayer, on 2 April 1944, reported to von Ribbentrop, through Ritter, that Winkelmann's subordination (to Veesen-

mayer) had been carried out in every respect thus far and the cooperation was functioning smoothly in a comradelike manner.

On 3 April 1944 Veesenmayer reported to von Ribbentrop, through Ritter, that after the next air attack on Budapest he would have no scruples against having 10 suitable Jews shot for every Hungarian killed, and inquired, in view of von Ribbentrop's suggestion to Hitler to offer all Jews as a present to Roosevelt and Churchill, whether this idea was being followed up, or whether he might, after the next attack, start with the retaliatory measures described. This was distributed to Steengracht von Moyland.

On 5 April 1944 Veesenmayer reported to von Ribbentrop, through Ritter, respecting his conference with Szalasi, head of the Arrow Cross Movement, and a subsequent one with Sztojay, the puppet head of the Hungarian Cabinet. He said of Szalasi:

> "On the whole I was disappointed in Szalasi. I consider him insincere, a clever technician, and not particularly intelligent. How far I can use him for my political purposes depends on further developments."

Veesenmayer, on 14 April 1944, reported to von Ribbentrop, through Ritter, that Sztojay had given a binding promise that by the end of April 40,000 Jews fit to work would be placed at the disposal of the Reich, that a drive had been started by the SD and Hungarian police, and all Jews between the ages of 38 and 45 hitherto not liable to the labor service would be registered and drafted, thus providing another 50,000 during the month of May, and had promised to increase the number of Jews organized in labor battalions in Hungary to 100,000 or 150,000 at the same time.

On 14 April 1944 Veesenmayer reported to von Ribbentrop, via Ritter, that he had urged Sztojay to see to it that the Hungarian press and radio offer much stronger opposition to Kallay and his party.

On 15 April 1944 Veesenmayer reported that, upon his demand, the Minister President, Sztojay, had agreed to place at Germany's disposal 50,000 Jews by the end of the month, that he would receive 5,000 forthwith and thereafter 5,000 every 3 or 4 days until the number of 50,000 was reached.

On 23 April 1944 Veesenmayer reported to the Foreign Office, and also to Ritter, that 150,000 Jews had already been put into ghettos, and that when the action was completed the number would approximate 300,000; that an additional 250,000 to 300,000 were yet to be dealt with; that negotiations for transportation had been started and that the shipment of 3,000 a day would begin on 15 May; and that Auschwitz had been designated as the receiving station.

On 27 April 1944 Ritter, from Salzburg, wired the German Legation in Budapest that the Chief of the Security Police and Security Service stated that the deportation of 50,000 Hungarian Jews, on an open labor assignment to plants in Germany, was out of the question because it would make "illusory" the complete evacuation of Jews from Reich territory and the effected exclusion of Jews from the plants in the Reich, but that there was no objection to bringing Hungarian Jews in to Reich labor camps under the complete control of Himmler; that the SD would issue a separate directive concerning their transportation. Ritter further suggested that in case of further delay in transportation the Embassy at Budapest, in its telegraphic reports, make clear that the German Embassy had done everything possible and necessary to carry out the operations as quickly as possible, and that the delay in deportation was due to the fact that the authorities in charge of deportation and placement of Jews did not make the necessary arrangements.

The term "labor camp under the control of the Reich Leader SS" was a euphemism for the extermination camp.

On 28 April 1944 Veesenmayer, as per Ritter's earlier instructions, reported to von Ribbentrop through Ritter concerning the successful efforts to remove 19 of the Hungarian district presidents, stating that he would shortly demand the withdrawal of more; that the successors to those already removed represented a substantially better category and that increased opposition from Horthy was to be expected.

Veesenmayer, on 30 April, reported to Ritter relative to the arrest of Jews and the proposed persecutions of Catholic priests for making anti-German remarks.

On 2 May 1944 Veesenmayer reported to von Ribbentrop, through Ritter, that in accordance with Horthy's wishes SS Obergruppenfuehrer Winkelmann and Gruppenfuehrer Keppler (not the defendant Keppler) were presented; that Horthy insisted on the integrity of Kallay and the other Ministers; and that Hitler's reproaches in 1943 were unjust, but that Veesenmayer left not a single point unanswered, as the result of which Horthy said it would be better to talk about the weather.

On 5 May 1944 Veesenmayer reported to the Foreign Office and also to Ritter that in Zone I, in the Carpathian territory, approximately 200,000 Jews had been placed in ten camps and ghettos; and in Zone II the work of placing an additional 110,000 Jews in concentration camps had begun, and that their evacuation to Germany was to start on May 15 at the rate of 3,000 per day.

On 8 May 1944 Veesenmayer wired Ritter that Count Bethlen and Dr. Janos-Schilling disapproved of the action against the

Jews which was under way in a certain district, and that they had both gone on sick leave, and that Bethlen had declared that he would not and did not want to become a mass murderer and would rather resign. Veesenmayer stated: "I shall demand that Count Bethlen and Dr. Schilling be called back." Subsequently both Count Bethlen and Schilling were removed from office.

On 10 May 1944 Veesenmayer relayed reports to von Ribbentrop, through Ritter, that the purge of Hungarian provincial administration was proceeding satisfactorily, and that 41 of the 62 governors had been dismissed and that 38 new ones had been appointed.

On 26 May 1944 von Thadden of the Foreign Office submitted a report, a copy of which went to Ritter, regarding the situation of the Jews in Hungary. He stated that the estimated number of Jews in Hungary was 900,000 to 1,000,000, 350,000 of whom lived in Budapest, and that, except for those who were concentrated in ghettos, an action was planned to start in Budapest between the middle and end of July to be a "tremendous 1-day action"; that according to present information, *about one-third of the Jews so far deported were able to work* and on arrival in concentration camps would be distributed to the agencies of Sauckel, Organization Todt, etc.

Veesenmayer made periodic reports of the number of Jews who had been deported to the Reich or to the East, most of which went to Ritter or to von Ribbentrop via Ritter.

On 3 July 1944 von Ribbentrop instructed Veesenmayer to tell the Hungarian Government that it was not opportune to take up the various offers from abroad on behalf of the Hungarian Jews. Veesenmayer, on 6 July 1944, reported to von Ribbentrop, through Ritter, on the Jewish question in Hungary and the appeals made by the King of Sweden and the Pope on behalf of the Jews; that the Hungarian counterintelligence had deciphered code messages from the American and British Governments to their Ministers at Berne which contained detailed descriptions of what had been happening to Jews from Hungary; that 1,000,000 had already been exterminated and that a majority of the deported Jews were suffering the same fate.

On 6 July 1944 Veesenmayer reported to von Ribbentrop, through Ritter, regarding the conference with the Hungarian Regent, Horthy, in which the latter urgently requested that Hitler speedily close down the Gestapo, in order to restore Hungarian sovereignty, and spoke of the protests he was daily receiving from the Vatican and the King of Sweden, also from Switzerland and the Red Cross and others, concerning the Jewish question, together with the determination to intercede in favor of the Chris-

tian Jews; he stated he told the Regent that, as long as Hungary did not totally disassociate herself from the treacherous policies of Kallay, the SS and SD agencies could not be discontinued; that the solution of the Jewish problem could not have been completed without Germany's support; that the Hungarian people increasingly recognized the burdens which the Jews made for Hungary. Veesenmayer also demanded the removal of the Hungarian Minister Csatay and his deputy, Ruszkicay-Ruediger.

On 20 July 1944 von Ribbentrop's office wired Veesenmayer asking for a report (*NG–2994, Pros. Ex. 1825*) on the British radio charge that "Germany wants to transact business with Jewish blood" and that two Hungarian delegates had appeared in Turkey to submit an offer from the Gestapo and the Hungarian Government that all Hungarian Jews in Hungary would receive exit permits on the condition that British and Americans supply Hungary with a certain amount of medicaments and transportation.

On 22 July Veesenmayer reported to von Ribbentrop, through Ritter, that from some confidential information given him the British report was correct, and was the result of a secret order of Himmler.

On 24 October 1944 Veesenmayer reported to von Ribbentrop, a copy of which was distributed to Ritter, that he had handed a note to the Hungarian Foreign Minister regarding the Jewish situation and the Regent's decision not to permit any Hungarian Jews to be deported to the Reich, and that it was only after 16 October, under the advisory cooperation of German agencies, that new negotiations were started with the aim to find a final solution for the Jewish question in Hungary.

An examination of the alleged incriminating documents with respect to Hungarian Jewish affairs under count five presents a somewhat puzzling picture. Except in the very early days of Veesenmayer's incumbency as Minister and Plenipotentiary, there is nothing to indicate that Ritter took any action, gave any advice or any directives. It appears that, for a number of months, Veesenmayer almost invariably sent his reports to von Ribbentrop through Ritter, or made reports bearing the marginal note, "Also for Mr. Ritter." But that is as far as the record goes.

No witness has testified that Ritter took any action whatsoever with respect to these reports. A plausible and, we are inclined to believe, the truthful explanation of the situation is given by the defendant. At the time Veesenmayer was sent to Budapest, there was in contemplation and thereafter put into execution a plan for the German armed forces to invade Hungary, intern its armed forces, and secure the country against any attempt on the

part of its Regent or government to conclude an armistice or peace. Insofar as Hungary became an operational area, Veesenmayer, as Reich Plenipotentiary, had no jurisdiction, under the Fuehrer decree, to interfere with or direct military operations. During that stage of proceedings, however, involving as it did the invasion of the lands of an ally, the Foreign Office was deeply interested inasmuch as it intended to use this invasion to force the Horthy government to appoint a pro-German cabinet. Therefore, the need of close liaison between the German Minister in Budapest, the Foreign Minister, and the Chief of the Wehrmacht, was imperative.

Ritter was the liaison officer, and, under the circumstances, it was entirely natural that von Ribbentrop should have instructed him to give attention to Hungarian affairs so that the work of the Wehrmacht and the policy of the Foreign Office might be coordinated and work toward the objectives in view. This would account for von Ribbentrop's instructions to Ritter, and it also accounts for the fact that apparently Ritter ceased to interest himself in the situation after the Wehrmacht withdrew in April 1944. A realization on the part of von Ribbentrop that cooperation, thus compelled, was not likely to be wholly satisfactory, and that the Hungarians might attempt to regain sovereign power and pursue their own foreign policy and thus the use of the Wehrmacht might again become necessary, readily explains why the instructions given to Veesenmayer to report to the Foreign Minister through or via Ritter were not rescinded.

Ritter's knowledge of the situation, from the receipt of Veesenmayer's reports, may be reasonably inferred, but Ritter is not to be convicted because of what he knew. He can only be found guilty for what he did.

The evidence is not sufficient to warrant his conviction under count five so far as Hungary is concerned, and he must be and is, exonerated, and found not guilty with respect thereto.

STUCKART

Stuckart was born in 1902. He studied at the Universities of Munich and Frankfurt and passed his State law examination in 1930. He joined the Party in 1922 and remained a member until it was dissolved by decree during the life of the Weimar republic. When arrested by the French in 1923 or 1924, his membership was taken from him. Nevertheless, from 1926 to 1931 he acted as legal officer to the Party organization in Wiesbaden and formally reentered the Party in August 1930. He occupied a judicial position and from March 1931 until February 1932 was a trial judge

in the local and district court at Wiesbaden. Because of continued official difficulties resulting from his work for the Party he resigned and entered the practice of law at Stettin. He took over the Gau law office in Pomerania and was Gau Fuehrer of the NSRB.

In April 1933, shortly after the seizure of power, he was appointed the provisional mayor and state commissioner of Stettin and was elected to the Pomeranian Provincial Assembly on 17 July 1934. Von Hindenburg appointed him Under Secretary of the Reich Ministry for Science and Education. In 1935 he was appointed by Hitler to the Ministry of the Interior and placed in charge of Division I. At that time, although holding the nominal rank of State Secretary, which he carried over from his appointment in the Ministry of Science and Education, he did not hold the position of State Secretary in the Ministry of the Interior until Himmler succeeded Frick. He was officially appointed State Secretary in 1943, when Frick left the Ministry and Pfundtner, who had been the sole State Secretary, resigned.

Division I was divided into appropriate sections and had jurisdiction over constitutional and organizational law, legislation and administrative law, citizenship and race, new organization in the Southeast, the Protectorate of Bohemia and Moravia, new organization in the East, new organization in the West, Reich defense, military defense statute and defense law, and war damage.

Frick appointed him staff leader for the Plenipotentiary of Reich Administration. As Hitler's aggressive campaigns proceeded, the defendant Stuckart became head of the central office for the following countries: Austria, the Sudetenland, Bohemia and Moravia, Alsace-Lorraine, Norway, the southeastern territories—Yugoslavia and Greece, and Bialystok. The function of these central offices was to coordinate and implement all measures deemed necessary to complete the details of their incorporation into the Reich, or to the needs and aims of Germany therein.

On 7 December 1939, Goering appointed Stuckart, the defendant Koerner, and various other state secretaries as members of the General Council for the Four Year Plan.

As its name implies, the Ministry of the Interior had jurisdiction over practically all matters relating to public order and security of the Reich and in all areas which were attempted to be incorporated therein, and in the occupied territories, as well as practically all other legislation (except in very limited fields) which affected the daily life of the people.

In theory, at least, all police affairs were a part of and subordinate to the Ministry. Until he himself became Minister of the Interior, Himmler, as Chief of Police, ordinary, secret, and

special, was the Minister's subordinate, but in practice he became almost completely independent. When Frick left the Ministry in 1943, Himmler succeeded him and thus made himself supreme in all matters for which the Ministry was competent. Throughout the Nazi regime, few of the measures, administrative or executive, and almost none of the laws or regulations, which formed the foundations of Nazi persecution, were undertaken without the consent, advice, and affirmative action of this Ministry. The so-called Germanization program was one in which the Ministry of Interior was deeply involved. We shall not repeat what has already been said regarding it. That this scheme of mass deportation, evacuation, and forced settlement was a flagrant breach of international law and a crime against humanity has been established beyond question of doubt. Our only task is to determine what part, if any, Stuckart played therein, and the degree of criminal responsibility attaching to him.

On 8 December 1939, the Ministry of Interior issued a decree (*NO–2526, Pros. Ex. 1307*) addressed to the Reich Governors of Danzig, Poznan, Koenigsberg, and Breslau, giving detailed instructions concerning the authority of Himmler as Commissioner for the Strengthening of Germandom, stating that his appointment made no changes in the competency of the intermediate and lower authorities, except that they were to fulfill Himmler's directives. This decree merely implemented and clarified the Fuehrer decree creating the Office for Germanization, in order that the governors and other lower echelons might clearly understand their duties and responsibilities. It was prepared in Stuckart's Department I, East.

On 12 November 1942 Himmler issued a general order (*NO–2562, Pros. Ex. 1326*) designating the Zamosc area in occupied Poland as a settlement area. A copy of this was sent to Stuckart's subordinate, Ministerialrat Duckart.

Exhibits 1329 to 1333 [Documents NO–4004, NO–4005, NO–4006, NG–3310, and NG–3008, respectively] consist of correspondence in the spring of 1944 concerning the return of Germans who had been settled in the Government General to the Reich. The prosecution contends that this was a part of the Germanization and resettlement program, but we do not so view it. By that time the rapid advance of the Russian armies necessitated abandoning that area, and we think that Stuckart's recommendations and suggestions as to the place where the refugees could be accommodated, namely, East and West Prussia, were brought about because of the necessity of providing some place for these people to live either permanently or until such time as they could return to their domicile in the Government General. That the majority

of the people so concerned had been resettled in the Government General contrary to international law and that the circumstances of their settlement and evacuation of Polish nationals was a crime against humanity, we have no doubt, but the instances in question do not constitute a part of the crime.

On 17 August 1942 Stuckart attended a conference at the Fuehrer Headquarters at which the defendant Berger, Lorenz, Pruetzmann, and Greifelt of the SS were present (*NO–2703, Pros. Ex. 1340*). The mistreatment of 45,000 ethnic Germans, who had been settled in the Ukraine, and the suitability of the Latvians and Lithuanians, was also discussed. It was then determined that the Lettgallen [Latgalians]* must be evacuated from Latvia, that the Lithuanians could not be considered for Germanization because of alleged mental slowness and their strain of Slavic blood. It was said that no difficulty should be encountered in White Ruthenia, as the population there was not intellectual and had no political ambitions; that the Crimea should be resettled at strong points so that towns of 15,000 to 20,000 inhabitants would grow up there and around them a completely German agricultural population resettled. It was also suggested that it must be kept in mind that that part of a nation which was valuable from a racial viewpoint could not be won over if they have been previously systematically robbed, as had occurred in Estonia, where the so-called German business managers were receiving 1,500 marks or more a month, while the previous Estonian owners, who looked after the business, received a salary of 300 marks, and that it was disastrous if slogans like the following should be coined (*NO–2703, Pros. Ex. 1340*):

> "Stealing is called mania with the little people, kleptomania with the distinguished people, and Germania with the Germans."

It is evident that those present at that meeting were adequately informed of the nature of the Germanization and resettlement program, if they were not theretofore intimately acquainted with it, but it is also clear that one of the purposes of the meeting was to cure abuses suffered by German resettlers, such as had occurred in the Ukraine. Not only were strong criticisms expressed, but plans were made to correct conditions. The conference discloses indignation concerning the strong criticism of the administration in the Ukraine, so far as the resettlements were concerned, but did not concern itself with respect to the wrongs and persecutions which had been imposed on the native population.

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* Inhabitants of Latgalia, easternmost province of Latvia.

On 26 November 1942 (*NO–4133, Pros. Ex. 1346*), portions of Serbia were selected for resettlement, and on 8 December 1942 (*NO–4131, Pros. Ex. 1347*), measures for the resettlement of Bosnian ethnic Germans were determined upon. Copies of these communications were sent to Stuckart's subordinate, Duckart.

On 29 March 1939 Stuckart's Division I prepared, and Pfundtner, State Secretary, signed, a directive (*NG–295, Pros. Ex. 1348*) to the Regional Governors and Reich Commissioners for the Saar, Sudetenland, and Austria, and to the chief of the civil administration in the Protectorate, giving definitions of the terms, "members of the German people," and "ethnic Germans," and how and in what manner members of these groups became eligible for Reich citizenship and which were to be excluded from such classification.

On 30 May 1942, Stuckart, deputizing for Frick, with Bormann of the Party Chancellery and Himmler, signed a second decree on the German people's lists (*NO–4618, Pros. Ex. 1352*) and German citizenship in the Incorporated Eastern Territories. Among other things, it excluded Jews and gypsies from the status of "protectees."

In this connection Stuckart insists that his original draft provided that Jews should have the status of protectees, and there is evidence substantiating this statement. We have, however, carefully examined the documents, and we do not believe that their rights or status as protectees were intended to be greater than if not given that appellation.

On 30 May 1942 Stuckart also signed, as a deputy, a decree (*NO–4686, Pros. Ex. 1353*) prepared at Himmler's request, establishing a supreme court for ethnic classifications in the eastern territories.

Stuckart was informed in February 1942 of directions (*R–112, Pros. Ex. 1355*) regarding the classification and subsequent treatment of certain classes of people included in the ethnic German list or register. They ordered that those who might be placed in class IV should be deported into the Reich and resettled there, or if they were asocial, of inferior heredity, or of bad political record, they were turned over to the police to be imprisoned in concentration camps; that where a wife also had a bad political record she was to receive the same treatment, and the children, in that event, taken from her and resettled in the Reich; that persons who had previously practiced professions involving leadership were to be "reeducated" for other professions, not involving leadership; that the children were to be compelled to join the Hitler Youth, but not allowed to attend local secondary schools or universities unless they had been attending a German boarding

school for at least 3 years, and had been designated by that for university attendance; that the property of those who were not sent to the concentration camps was to remain in custody of the SS organization, and they were to be permitted to receive such installments of their own property as the SS determined in order that they might support themselves and pay necessary expenses; that those who were to be resettled in the Reich were obliged to immediately join an organization associated with the Party, and the children to join the Hitler Youth Movement; they were forbidden to change their domicile during the first 5 years, to marry, or to start university studies without police consent. The Higher SS and Police Leaders were enjoined to take particular care that the re-Germanization of the children was not adversely influenced by their parents, and, if necessary, to separate them from their people and place them with families of proven political and ideological opinion.

In July 1943 Ehrensberger of Stuckart's division issued orders (*NG–4639, Pros. Ex. 1025*), addressed to the Reich governors in the East and the heads of the Central Offices for German Registration in East Prussia and Upper Silesia and to many regional offices, with copies to the various supreme Reich authorities, regarding the classification of step, foster, and illegitimate children in the eastern territories. Among other things it described many circumstances under which children were to be taken away from their parents and sent away to the Reich or put in German families or treated as Polish orphans.

On 23 May 1944 Stuckart's division prepared a decree (*NO–3738, Pros. Ex. 1367*) addressed to the citizenship authorities in the Reich territory, directing that care be taken that ethnic Germans and Germanized persons did not avoid registration and recognition of their German citizenship in order to avoid military service; that should ethnic Germans and foreign nationals, regarded as completely Germanized, refuse to submit an application for recognition of this German citizenship after having been instructed so to do, they should be reported to the SD, which would then take action. Under the Himmler decree of 16 February 1942, it stated that the RSHA would apply this decree to ethnic Germans residing outside the Incorporated Eastern Territories who refused to make this application. This simply meant that such persons would be subjected to police measures, including the concentration camp.

It is to be remembered that this applied not only to ethnic Germans and Germanized foreigners who came voluntarily into the Reich, but included those who had been brought there involuntarily and upon whom German citizenship had been conferred

without their willingness or consent. While conscription laws may be applied to all those who voluntarily take up their domicile in a country, it can hardly be said that the citizens of other nations who have, against their will and without expressing any desire to move, been deported can then be made subject either to involuntary citizenship or to conscription laws.

A decree prepared by Section I of Stuckart's division on 13 March 1941 became the basis of various Himmler orders and directives relating to the Germanization lists; and arbitrarily conferred citizenship on inhabitants of various occupied territories.

On 4 May 1942 Stuckart signed two orders (*NO–4620, Pros. Ex. 1363; NO–4621, Pros. Ex. 1364*), with copies to the highest Reich authorities, the Party Chancellery, etc., giving directions to the various naturalization agencies as to the means, methods, and procedure to be followed and extending the measures to former Polish or Danzig citizens.

On 15 January 1945 Stuckart wrote the OKW (*NG–3773, Pros. Ex. 1368*) forwarding certain changes in definitions of those who were subject to Germanization, distinguishing between "members of the German people," "German nationals," "German nationals whose nationality may be rejected," "Germans abroad," "ethnic Germans," etc.

As early as 11 February 1942, Stuckart informed the defendant Von Weizsaecker about the recruiting of male Alsatians for service in the army brought about by the application of German law. Von Weizsaecker in reply (*NG–3446, Pros. Ex. 1021*) told Stuckart that although in principle he could not relinquish his point of view, he was prepared to waive his protest as "our actions in Alsace-Lorraine had far surpassed and overshadowed the incident referred to here."

On 5 August 1942 Stuckart wrote Himmler enclosing a draft of a decree conferring citizenship in Alsace-Lorraine and a draft of the implementing regulations. He plainly states that Hitler a short time before had given orders for the introduction of compulsory military service there. Stuckart not only made no objection but gave reasons for the approval of these measures. There is no question whatsoever that a large number of these conscriptees not only had no desire to serve in the German Army, but were particularly averse to the compulsory change in their nationality.

On 15 April 1944 Himmler issued a directive (*NG–1450, Pros. Ex. 1422*), prepared by Stuckart's Section I, regarding the treatment of mixed marriages between Poles and Germans, which provided, among other things, that if, upon examination, it was found that

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both spouses were unsuitable from a political, biological, ideological, or social point of view, they should be placed in classes III and IV, and if the German partner was already in that class, his name would be stricken from the register and, if necessary, his citizenship revoked and the family broken up.

On 5 August 1944 the RSHA issued a directive (*NO–3592, Pros. Ex. 1423*) stating that under the decree of 5 April 1943, which was prepared by Stuckart's Section I, a male Pole could not marry before reaching the age of 28 years or a female before 25 years. The purpose of this regulation was to reduce the birth rate among the Poles.

Stuckart's anti-Semitism.—The evidence clearly establishes that Stuckart held strong anti-Semitic views, and that while in office, both before and during the war, he used his official position to carry them out.

Stuckart asserts that his position in the Ministry of Interior was minor during Frick's tenure, and he was but a glorified clerk under Himmler. We do not believe this to be the fact. He was too often chosen by Frick to act in capacities requiring both knowledge, ability, experience, and strength of character. From the record itself and from the defendant's own demeanor on the stand it is quite apparent that he possessed these qualifications. His advice was asked and given. Many of the original decrees and most of the implementing decrees relating to anti-Jewish measures were drafted by him, or in his department under his supervision. When Hitler decided to enact the Nuernberg Laws, which was the first step in the long-continued campaign of persecution of Jews, Stuckart was called to aid in drafting them and did so.

The following laws and decrees were prepared by him or by his department under his direction, and some were even signed or initialed by him:*

The Reich Citizenship Law of 15 September 1935.
The First Decree supplementary thereto on 14 November 1935.
The Ninth Supplementary Decree of 5 May 1939.
The Tenth Supplementary Decree of 4 July 1939.
The Eleventh Supplementary Decree of 25 November 1941.
The Law for the Protection of German Blood and German Honor on 15 September 1935.
The First Decree supplementing that law on 14 November 1935.
The Second Supplementary Decree of 31 May 1941.

* Many of the laws and decrees mentioned herein are reproduced in the Justice case, United States *vs.* Josef Altstoetter, et al., Case 3, Volume III, this series.

The Third Supplementary Decree of 5 July 1941.
The law of 5 January 1938, concerning family and Christian names.
The memorandum of 18 August 1938, requiring Jews to use a Jewish first name.
The Second Decree of 17 August 1938, regarding change in name or Christian names.
The Decree of 20 July 1941, denying war damage to Jews.
The Second Decree supplementing the memorandum concerning the revocation of nationality and deprivation of German nationality.

In addition, the Minister of the Interior signed or cosigned the following decrees:

The Third, Fifth, and Sixth Supplementary Decrees to the Reich Citizenship Law, dated 14 June 1938, 27 September 1938, and 31 October 1938, respectively.
The Law of 28 March 1938.
The First and Second Supplementary Decrees concerning the status of Jewish religious congregations.
The Decree and Order of 12 November 1938, eliminating Jews from German economic life.
The Decree of 14 November 1940, relating to the examination and checking of businesses from which Jews had been purged.
The Fourth Decree of 27 December 1940, concerning the utilization of Jewish property.
The Decree of 26 April 1938, concerning the registration of Jewish property.
The Decree of 14 December 1938, for the elimination of Jews from German commercial life.
The Second Decree of 18 January 1940, concerning the use of Jewish property.
The Fifth Decree of 25 April 1941, relating to the same subject.
The police regulations of 1 September 1941, concerning the marking of Jews.
The Sixth Decree of 22 August 1942, concerning the utilization of Jewish property.
The Decrees of 3 December 1938, 16 June 1939, and 5 December 1939, concerning this same matter.

With respect to the decrees last named, it should be said that most of them were prepared by another Ministry, because the subject matter was primarily within the jurisdiction of that Ministry,

and submitted to the Minister of the Interior for examination, and, if approved, for cosignature. These drafts went to Stuckart's division for examination and report to the Minister.

The following decrees were prepared by the Ministry of the Interior but not in Stuckart's department, but he became one of the joint cosigners as chief of the "participating department": Second Supplement to the Reich Citizenship Law of 2 December 1935; Fourth Supplement of 25 July 1938; Seventh Supplement of 5 December 1938; the Eighth Supplement of January 1939.

All the decrees in these three classes were identified by the witness Bernhard Loesner, who was one of Stuckart's Referenten, and in charge of the section regarding racial and Jewish matters.

He states that on Stuckart's appointment as Chief of Division I, a change took place in the Ministry; that Stuckart was active, able, and ambitious and seized hold of the reins and to an increasing extent became the real Minister of the Interior, due to Frick's weakness and lack of interest in his work; and the fact that Pfundtner, who was not a convinced National Socialist, had no Party backing and was not particularly fitted for the position.

Pfundtner vanished when Frick resigned and Himmler became Minister of the Interior. Loesner states that at least up to the time when Stuckart joined the SS, which was on 13 September 1936, he fought a valiant fight on behalf of the Jewish Mischlinge,* but thereafter it became more difficult for the witness to approach him on this subject, and that in the year 1941 the final solution aimed at Jewish annihilation was effected by the Party, and that by the end of 1941 no doubt could exist on the part of anyone who had to deal with these problems; that on 21 December 1941 he demanded and obtained an appointment with Stuckart, and reported to him the description given to him by Dr. Feldscher, of the fate of the German Jews who had been deported to Riga; how they had been compelled to dig mass graves, to strip themselves of their clothes, lie down naked in the grave where they were shot by SS men, and then the next group was compelled to disrobe, descend, and lie down on the bodies of those first murdered to meet the same fate; that he told Stuckart he could no longer act as Referent on Jewish matters, and asked to be released; that the defendant told him, "Mr. Loesener, do you not know that all this takes place by the highest order?" to which Loesener replied, "I have a judge within myself who tells me what to do," whereupon Stuckart said that if Loesener could no longer be reconciled to his own conscience he would consider how he was to be further employed, and the witness thereupon requested to be transferred from the Ministry to the Reich Adminis-

* Persons of mixed race.

trative Court; that his request was not complied with for many months and the relations between himself and Stuckart became more or less strained, although he had the impression that up to the time he left the Ministry in 1943 Stuckart did not reject Loesener's views about half-Jews and mixed marriages.

With regard to Germanization, the witness reports a conversation with Stuckart in 1938 regarding the German naturalization of Transylvania physicians; that he expressed misgivings about this program, but Stuckart replied brusquely, "It doesn't matter. In the event of war we cannot have enough physicians and technicians." Loesener gave this affidavit on 24 February 1948 (*NG–1944A, Pros. Ex. 2500*). He himself became a victim of Nazi persecution and was finally confined in a concentration camp and not released until after the collapse. He was called to the stand and testified he had reexamined his affidavit, and with the exception of one or two minor corrections, which related only to the laws and decrees mentioned in the appendices to [*Document NG–1944A, Prosecution*] Exhibit 2500, confirmed it and its contents.

On cross-examination, (*Tr. pp. 7617–7664*), without repudiating any part of the affidavit he had just confirmed, he was quite prolific in his efforts, both on behalf of Stuckart and Lammers, and testified in a manner inconsistent with the conversations mentioned in his affidavit relating to the treatment of Jews.

It is quite apparent, as has happened on a number of other occasions in this case, that between the time the affidavit had been made and the witness testified, he had been subjected to influence.

This Tribunal is not unaware of the fact that there has grown up in Germany a campaign of propaganda to discourage and dissuade Germans from appearing to testify against fellow Germans who have been charged with crimes against international law. That this campaign has been successful is equally clear, and it has made more difficult the task of ascertaining the facts. We do not suggest, however, that in this instance either counsel or defendant were other than beneficiaries of this campaign. Nevertheless, the statements contained in Loesener's affidavit are obviously spontaneous and relate to matters which could not have been suggested to him by the interrogator. We are not here to blindly accept testimony but to weigh it. We believe, and so hold, that the statements made by the affiant Loesener in his affidavit, and confirmed by him under oath before this Tribunal, are substantially true.

In justice to the defendant it should be said that we are convinced that for a long time he courageously fought the measures against the Mischlings and attempted to intervene in favor of mixed marriages.

The draft of the letter to Himmler prepared in September 1942 evidences his inner convictions even though it is not entirely clear that it was in fact sent. It is true that this letter again reiterates the suggestion made by Stuckart in the Wannsee conference for sterilization of Mischlings, but there the story is not clear whether it was seriously meant or whether it was thrown out as a solution when Stuckart knew that it was a program which could not be carried out because of a shortage of surgeons and beds for the thousands who would be subjected to it, and that Stuckart felt that by making this suggestion he would delay and avoid more stringent measures and the plan would finally be dropped. Not being satisfied as to the fact, we must and do give Stuckart the benefit of the doubt. However, one thing is clear, that no one would suggest sterilization as a procedure of amelioration unless he was wholly convinced that deportation meant a worse fate, namely, death.

The extermination of the Jews was no secret in the Ministry of the Interior. The witness Globke, one of Stuckart's ministerial counselors, whom he called as a witness, testified (*Tr. p. 15471*):

> "A. I knew that the Jews were being killed in large numbers, and I was always of the opinion that there were Jews who were still living in Germany, or in Theresienstadt, or elsewhere in a sort of ghetto.
>
> "Q. [By defense counsel] You thought that there were executions but no systematic extermination?
>
> "A. No, I did not want to say that. I am of the opinion, and I knew that at the time, that the extermination of the Jews was carried on systematically, but I did not know that it was supposed to apply to all Jews."

Stuckart left the SA to become a member of the SS because he thought it more advantageous to belong to the SS. His last rank in that organization was Obergruppenfuehrer, and the witness Globke had the impression that Stuckart liked to show himself in public in his SS uniform. He also testified that before Himmler became Minister of the Interior he repeatedly approached Stuckart in order to get his suggestions adopted by that Ministry, but that after Himmler became Minister, his relationship with Stuckart was not so close.

We do not doubt that this is true. The fact remains, however, that upon Himmler's appointment as Minister he immediately promoted Stuckart to the position of State Secretary; and except as to divisions dealing with public health and probably those dealing with sports, Stuckart was the competent State Secretary in charge of the operations of the Ministry. Knowing what we do

about Himmler and his character, it is quite unlikely that he would have retained Stuckart unless he felt that the latter would do his bidding and carry out his policy. This we think Stuckart did and strangled his own conscience.

On 20 April 1940 Stuckart wrote to the Ministerial Council for Reich Defense, for the attention of the defendant Lammers, concerning a decree (*NG–1143, Pros. Ex. 1531*) for the treatment of Jews under German labor laws, stating that he felt that it was not permissible to pay Jews for working hours lost on New Year's Day, Easter Sunday, Whit Monday, or Christmas Day, notwithstanding the fact that German labor was so entitled under the law, and recommended that they be excluded from these privileges.

On 6 September 1939 Stuckart transmitted to the Ministerial Council for Reich Defense a proposed decree (*NG–1109, Pros. Ex. 1575*) which made sabotage of the German war effort applicable to the inhabitants of Bohemia and Moravia, irrespective of their nationality.

On 15 July 1942 Stuckart with Schlegelberger and Keitel signed an order (*2016–PS, Pros. Ex. 644*) subjecting non-Germans charged with having attacked a member of the SS or German police to the jurisdiction of combined SS and police courts.

This was for the purpose of depriving the accused of trial by the ordinary courts of the state where the crime was committed. Inasmuch as the members of these organizations were present in Bohemia and Moravia, in obvious violation of international law and as a part of the aggression against Czechoslovakia, there was no legal basis for such legislation, and the scant shrift which SS and police courts gave to any non-German before them, needs no elaboration.

In April 1944 Stuckart's Department I wrote Lammers regarding the then proposed Eleventh Ordinance Supplementing the Reich Citizenship Law, regarding the sterilization of Jews. It not only shows an adherence to the measures but argues the propriety and wisdom thereof, and it speaks with approval of provisions by which Jews could be declared stateless, even though guilty of no offense.

On 7 July 1941, Stuckart's Division I East prepared a communication (*NG–2499, Pros. Ex. 1536*) to the defendant Lammers as Chief of the Reich Chancellery, as well as to the highest Reich agencies concerning the draft of the Eleventh Ordinance supplementing the Reich Citizenship Law, which contains the following illuminating language:

> "The legal effects of the draft are tied to the permanent residence of the Jew. * * * This means that for the establish-

ment of the permanent residence only objective points of view are of importance; the free will of the person concerned is immaterial in this connection. Therefore, *all the Jews evacuated into the Government General come under this regulation.*" [Emphasis supplied.]

Thus, not only Jews who lived abroad or should thereafter emigrate of their own choice, but the hapless ones who were deported, not only lost their citizenship and became stateless, but suffered confiscation of property. A more heartless provision can hardly be imagined.

On the same date, in connection with the same communication, Stuckart wrote to Lammers stating that he did not contemplate including in the decree the provision contained in the previous draft that the permanent place of residence in the Government General is equal to a permanent place of residence abroad, because it seemed inappropriate to designate the Government General in a decree as a foreign country.

On 2 June 1942 Stuckart wrote the Supreme Reich Agencies and others regarding the payment of pensions to Jews who were deported to Lodz, stating that the Eleventh Decree did not apply to them because Lodz was still a part of Germany, but that because of the confiscation of their property the payments of pensions would be suspended. Stuckart had attended the Wannsee conference on 20 January 1942, where the program of deportation and extermination was made clearly apparent.

On 29 November 1941, when Heydrich sent out invitations to attend the luncheon where the final solution was to be discussed, one of which went to the defendant Stuckart, and the other to Kritzinger of the defendant Lammers' Reich Chancellery, he said (*709–PS, Pros. Ex. 2506*):

"Considering the extraordinary importance which has to be conceded to these questions, and in the interest of the achievement of the same viewpoint by the central agencies concerned with the remaining work connected with this final solution, I suggest to make these problems the subject of a combined conversation, especially since Jews are being evacuated in continuous transports from the Reich territory, including the Protectorate, Bohemia and Moravia, to the East ever since 15 October 1941."

On 21 September 1939, Heydrich wrote to the chiefs of the Einsatzgruppen, copies of which went to Stuckart, in which communication he said (*3363–PS, Pros. Ex. 2501*):

"Subject: Jewish question in the occupied territory

"With reference to today's conference in Berlin I am once more stressing the entire measures (ergo the final aim) are to be strictly secret. It has to be discriminated between, (1) the final aim (which will take some time) and, (2) the sections of fulfillment of this final aim (which will be achieved in short term)."

In 1938 Stuckart published a monograph entitled, "The Care for Race and Heredity in the Legislation of the Reich" in which he said (*NI–6094, Pros. Ex. 2509*):

"The aim of racial legislation has been achieved and racial legislation can, therefore, be regarded as essentially complete. It leads, as mentioned above, to a preliminary solution of the Jewish problem, and at the same time helps to prepare a definite solution. Many of its decisions will lose their importance as the final solution of the Jewish problem in Germany is approached."

The prosecution insists that in the use of the term "final solution," Stuckart meant the extermination of the Jews.

The first edition of this monograph was published in 1938, as we have ascertained after conference with counsel for the prosecution and the defense. At the time it was written the plan was not extermination, but emigration or expulsion from Germany. It was not until at least 2 years later that the plan to murder the Jews *en masse* was adopted. While this monograph, therefore, does not refer to mass exterminations, it does throw light upon Stuckart's attitude toward anti-Semitism. His present excuse is that he could not publish his actual views. We do not, however, believe that he had any feeling of tenderness for Jews, or of repulsion against anti-Jewish measures, and that the efforts which he made on behalf of the Mischlings were due largely because he accurately foresaw the psychological effect in Germany which would arise from the breaking up of marriages and the condemnation of those who had at least 50 percent of German blood in their veins.

We are convinced that Stuckart was fully aware of the fate which awaited Jews deported to the East, and there can be no doubt that the legislation and regulations, which he drafted and approved, were a component part of the program which was intended to and did result in the almost total extermination of Jews. If the commanders of the death camps who blindly followed orders to murder the unfortunate inmates, if those who implemented or carried out the orders for the deportation of Jews to the East are properly tried, convicted, and punished; and of that we have no question whatsoever; then those who in the

comparative quiet and peace of ministerial departments, aided the campaign by drafting the necessary decrees, regulations, and directives for its execution are likewise guilty.

In all of these matters the skill, learning, and legal knowledge of Stuckart was placed at the disposal of those who originated the plan of extermination. The fact that his conscience may have been troubled and the fact that he saw not only the wrong but the folly of the proposals with respect to Mischlings, cannot excuse or condone what he did.

We find the defendant Stuckart guilty under count five.

VEESENMAYER

In discussing the charges against Ritter under count five, we have adverted to much testimony which is applicable to the defendant Veesenmayer, and except where necessary we will not again refer to it. Veesenmayer was a protege of the defendant Keppler and was employed in what was then known as the Keppler Office. He was an enthusiastic and convinced Nazi. He was detailed to accompany Keppler when the latter was sent to Austria shortly before the Anschluss, and later was given special assignments to Danzig immediately before the Polish invasion, and to Croatia shortly before the invasion of Croatia, and again when fighting broke out there, and in 1943 was sent twice to Hungary to conduct secret investigations regarding the political situation there. He was also sent to Slovakia in connection with the anti-Jewish campaign in that area. He was selected for these and his final mission as Minister and Plenipotentiary to Hungary because of his ability, courage, and devotion to the Nazi program.

Hungary.—By the Fuehrer Decree of 19 March 1944 (*NG–2947, Pros. Ex. 1806*), the defendant Veesenmayer was appointed Minister and Plenipotentiary of the Reich to Hungary, then an ally of Germany. By it he was made responsible for all political developments in Hungary, and was to receive directives through von Ribbentrop regarding same. He was given the special task of paving the way for the formation of a new national government, which would carry out the will of Hitler and obligations imposed by the Three Power Alliance; he was charged to keep the Nazi government advised of all important matters and represent its interests, to insure that the entire administration of the country, as long as German troops remained there, was managed by the new government under his guidance in accordance with German directives. A higher SS leader was to be appointed to carry out duties in connection with the Jewish problem, and to act under Veesenmayer's political directives. The German troops in Hun-

gary were to remain under army command, and Veesenmayer was ordered to meet their requirements. The army was under obligation to support Veesenmayer in his political and administrative duties.

Paragraph 4 of the Hitler decree contains the following language: "German civilian offices of no matter what nature * * * may be established only with the consent of the Reich Plenipotentiary, and they will be subordinate to him and will act in accordance with his directives." That von Ribbentrop placed great importance on this paragraph is clear from the fact that he ordered Ritter to inform all top Reich agencies of it.

The defendant strenuously contends that this clause became a dead letter. The facts concerning it will be discussed in consideration of the defense. Veesenmayer's instructions (*NG–5522, Pros. Ex. C–438*), given him by Ritter were to cause himself to be presented immediately to the Hungarian Regent, Horthy, inform the latter of Hitler's order to form a new government which was to include Imredy, and in addition Veesenmayer was to nominate other members, in whom he had confidence.

On the following day, 20 March 1944, Ritter wired him (*NG–5520, Pros. Ex. C–439*) to confer with Kaltenbrunner and arrange that all exits of the castle be watched by the German Secret Police, who were to arrest the former Minister President, Kallay, if he attempted to leave the castle.

Among the reasons which induced Hitler to thus shear Hungary of most of its powers as a sovereign nation was the fact that its policies toward the Jews were unsatisfactory. It had become the great refuge of European Jews, who fled from territories which were occupied by the Germans and its satellite countries, and while, as we have heretofore stated, there was a strong current of anti-Semitism there, and numerous restrictive laws had been enacted, nevertheless, in comparison with what they have suffered elsewhere, the Jews' fate in Hungary was at least bearable.

Pressure was brought on Hungary to change its Jewish policy at least as early as August 1942 when Luther discussed the matter with the Hungarian Minister [Sztojay] to Berlin, and on 6 October 1942 [*NG–1800, Pros. Ex. 1804*] again brought the matter up and insisted that all Hungarian Jews in occupied territories must be evacuated, urging Hungary to deprive Jews of their citizenship, so that the deportation measures could be carried out against them, offered to permit Hungary to participate as a trustee in the legal measures pertaining to their properties which were confiscated. He further urged that Hungary take the initiative to solve the Jewish problem within its own borders, by adopting

measures to eliminate all Jews from the cultural and economic life, marking them, and evacuating them to the East.

The Hungarian Minister, while purporting to show understanding of the German position, insisted that Hungarian Jews in territories under German control be treated according to the principle of the most favored group, and inquired as to whether other countries, such as Rumania and Italy, had agreed to the program with respect to their own Jewish nationals. He further stated that the Prime Minister Kallay was particularly interested in knowing whether a continued existence in the East would be made possible for the Jews after their evacuation; that there were many rumors in this connection which disturbed Kallay somewhat, and the latter did not want to be accused of having exposed Hungarian Jews to misery *or worse* after evacuation. Luther assured him that the Hungarian Jews would be first used in the East for road construction and later settled in a Jewish reserve.

The defendant von Weizsaecker on 20 October 1942 (*NG–5727, Pros. Ex. 3765*) also discussed the matter with the Hungarian Minister and stated that "the way Hungary treated the Jewish problem has, so far, not been in accordance with our principles." This interview was brought about by the then existing Tripartite Pact and the agreement between Germany and Hungary, and on the same day von Weizsaecker requested that on his return from Budapest the Hungarian Minister give him a report of what the people there thought of the German proposals concerning the treatment of Jews.

On 16 January 1943 (*NG–1798, Pros. Ex. 1805*) Luther conferred with the Hungarian Minister and expressed his surprise that the Hungarian Office for Jewish Affairs had been dissolved, effective 1 January 1943, and reminded him that Hitler was determined, under all circumstances, to remove all Jews from Europe, and that Germany was much concerned that Hungary, a friendly country, should shelter approximately 1,000,000 Jews, and said that Germany could not, in the long run, look upon this danger without taking action; that Sztojay's excuses were so unconvincing that one could readily see that he did not himself believe them. Luther, in his report, expressed the hope that " our constant urging" would finally be successful.

The situation did not mend, and Veesenmayer was sent to Hungary to make an investigation, and on 30 April 1943 he rendered a long report (*NG–2192, Pros. Ex. 1813*) to von Ribbentrop, a copy of which on 19 May was received and initialed by Himmler. In this report Veesenmayer asserted that the failure, during the winter, of the Hungarian troops in the East was the necessary consequence of the attitude of the Hungarian State and its people;

that the key to the defeatist attitude of the Hungarian authoritative circles was to be found primarily in Hungarian Jewry, which amounted to almost 10 percent of the entire population, and 35 percent of that in Budapest; that the Jewry's influence was much higher than the numerical percentage indicated; he confirmed that Hungary had made itself a refuge for European Jews in the hope that the benevolent treatment extended them would constitute a guarantee of protection of Hungary's interests at the end of the war; and that this explained Minister President Kallay's attitude in expressing his intention to correct the injustices inflicted on the Jews by his predecessor.

Veesenmayer was severely critical of Horthy (*NG–2192, Pros. Ex. 1813*), stating that the only point he had in common with the Reich was his hatred of bolshevism. He pictured Szalasi and his movement as weak and ineffective; that the Archduke Albrecht could only be valued insofar as he could be utilized, either used or abused; that Imredy and Bardossy were the only men who could be seriously considered for a Nationalist government, but that they could do so only if Germany gave them the necessary backing and assistance; that the opposition to the then government had not been able to create in the rising generation any permanent resonance which would make possible an effective fight against the Jews and the system which was created by them; that there was nothing in Hungary comparable with the Ustachi of Croatia; that the situation was such that it would present a greater danger for the Axis the longer the war existed; that the Hungarian police and the gendarmerie were most effective, but apparently devoted to Horthy and the existing government, that its undermining was practically impossible; that it must be recognized that one was dealing with an opponent who was very cunning and knew how to wield his authority in a masterful way; that Kallay was pro-Jewish and, in addition, held an antagonistic attitude toward Germany on other questions, including the Reich drafting of ethnic Germans into the SS; that any change in the then Hungarian Government could only be successful if Bethlen, Kallay, and the Jews, Chering and Goldberger, not only disappeared from positions of authority, but vanished completely; that after Horthy's visit to Fuehrer Headquarters, while the Jewish problem had been discussed energetically, nevertheless it had not moved the Regent to permit the necessary measures; that Kallay's tenure in office was uncertain; that after the first shock the Hungarian regime was planning an appropriate substitute for Kallay, who would insure continuous maintenance of the old practice; that the fear existed that German troops would be stationed in Hungary and would demand severe measures against the Jews

and that everything must be done to oppose this; that the presence of an SS division in Budapest would mean the beginning of the end of the present Hungarian regime.

In conclusion Veesenmayer recommended a thorough shake-up in the government, through, but not without or even against the person of the Regent; that the top clique be removed and supplanted by persons capable of exerting a permanent and beneficial influence upon the Regent from the viewpoint of the Axis; and that, in case Imredy or Bardossy were contemplated for leading positions, it must be recognized that these men represented a red flag to Horthy, and appropriate preparatory measures must be taken or other considerable pressure on the part of the Reich would be necessary. Finally, that the initiative, execution, and safeguarding be directed by persistent influence from the outside, in other words, from the Reich.

On 10 December 1943, after a second trip to Hungary, Veesenmayer made another report of some 28 pages. (*NG–5560, Pros. Ex. 3718.*)

> "These are the deep-rooted links, and at the same time the reason that the Hungarian is not an anti-Semite. The Jews knew this very well. It is for this reason that this race, with its characteristic instinct succeeded in gaining refuge in Europe. Undermining of the ancient Danube monarchy was, to my mind, not accomplished by the other nationalities such as Czechs, Poles, Croates, etc., but rather the internally infected Hungarians whom the Jew rules predominantly today, not only in the economic, but also in the political field. * * * The Jew is Enemy No. 1. These 1½ million Jews amount to as many saboteurs of the Reich and an identical, if not double, number of Hungarians are followers of the Jews, their auxiliaries and their camouflage, in order to accomplish the comprehensive plot of sabotage and espionage.
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> * * * * * * *
>
> "For the policy of the Reich, a rewarding but pressing task presents itself in the tackling and the straightening out of this problem. This policy holds all the more good since not a military but almost exclusively a political problem is to be dealt with. If fear and cowardice govern the opponent, plain talk and tough demands are sufficient, supported by the hint of German divisions and fighter squads.
>
> * * * * * * *
>
> "To sum up, even a Hungarian Government represented by the relatively top men of the [National] opposition today can be viewed as a temporary solution, and a realistic expediency.

It will only gain full value for the Reich if besides, or rather in addition, a German custodian will be placed in an appropriate manner.

* * * * * * *

"These men are honest and violent opponents of bolshevism. They can be lined up with a 'liberated' Reichsverweser and might amount to an important relief for the Reich by fighting bolshevism and Jewry.

* * * * * * *

"Of all the personalities of the national opposition, former Minister President Imredy appears to me still the fittest figure. He is mentally most alert, his personality and character are well integrated; he disposes of a certain reputation; and his followers in the country are also well organized. * * * For reasons of transitional expediency parts of the present government party could be enlisted either for cooperation or for liquidation of their own past.

"The objection of the Reichsverweser designating Imredy as insupportable is correct. This objection results from Imredy's efforts in his previous capacity as Minister President, especially in the field of the Jewish question and the land reform. * * * I am definitely convinced that the Reichsverweser will accept any Minister President without ado if the Fuehrer demands or even desires it, just to save himself and his dynasty and to live to see his dream fulfilled to become a duke.

* * * * * * *

"A keen tackling of the Jewish problems appears for various reasons to be the order of the hour. Its solution is the prerequisite for integrating Hungary into the fight of the Reich for defense and existence."

The demands of space forbid further quotations from this illuminating document and its conclusions, and we content ourselves with the foregoing and the following excerpts from his proposals and suggestions:

"Prompt action is imperative. * * * The German press should pursue a systematic policy of hammering on the morale of the opponent, including distinguishing between system of the government and the people * * * current and ever growing criticism with regard to the Jewish question * * * talks between the Hungarian diplomats and press men from the Foreign Office * * * concentration of troop movements on various points of the German-Hungarian frontier * * * invitation to Horthy to attend a Fuehrer conference or a visit to Budapest by leading

German personalities, such as Goering or Himmler; applying to Horthy the method of the kid glove and the iron fist * * * outright demand for the removal of the present government without giving detailed reasons * * * appointment of a new Prime Minister * * * reorganization of the German Legation at Budapest * * * eventual delegation of a political representative fixed with far reaching powers for a certain duration * * * eventually, the delegation of a special, high-ranking German as permanent military adviser to the Reichsverweser; selection of the most suitable members of the new government to be carefully selected with the new Prime Minister * * * the appointment of suitable commissioners with far-reaching powers for five districts to be formed, who must be bloodhounds * * * immediate action in the field of the Jewish question after a previously coordinated plan * * * notifying the enemy that for every Hungarian killed by bombs, one hundred wealthy Jews would be shot and their property used for restitution of damages."

The recommendations which Veesenmayer outlined were carried out almost to the last detail, and its author was selected as the one best fitted for the task of executing them. It was only in the latter part of the year 1944, when Horthy attempted to break the bonds imposed upon him by Veesenmayer that he was deposed and imprisoned. Veesenmayer insists that these exhibits do not represent the original reports made by him, and that after heated discussion with von Ribbentrop they were abridged and somewhat changed. While it may well be that von Ribbentrop required the reports to be abridged and even insisted on some changes therein, nevertheless Veesenmayer signed them. It is far too great a strain on our credulity to believe that had Veesenmayer been in opposition to the changes, he would have been selected as the man to carry out the recommendations appearing over his signature.

While the defendant is entitled to all reasonable doubts, they must be reasonable and not fanciful. Veesenmayer had no diplomatic experience, although he had been detailed on several occasions to do work in which the Foreign Office was interested, notably in Serbia and Danzig.

It is idle for the defendant now to assert that he was other than a radical anti-Semite, or that he did not advise or take an active part in the horrible mass deportations which took place in accordance with and in execution of the very plan which he fathered. Nor are we impressed by the insinuations, which he made while on the witness stand, in his final statement and in his brief, that Horthy was in fact sympathetic with the German

program of the deportation of Jews and their subsequent extermination. It is contradicted by the attitude consistently shown by him and quite generally by the Hungarian Government, except the few who were creatures of the Third Reich; by the fact that it was found necessary to bring continued pressure on him to obtain an even apparent consent to the proposed treatment of the Hungarian Jews; that he continuously sabotaged this apparent consent; that numerous obstacles, real or fancied, were placed in the path of deporting the Jews; and finally, by Veesenmayer's own estimation of Horthy's attitude which is shown by his reports. We recognize that there may be some inaccuracies in Horthy's recollection and testimony, but we find that in the main it states the fact.

Veesenmayer was the *de facto* ruler of Hungary. His main role was to outline for the Hungarian Government the policies which it must follow, and to put into power persons who provided sufficient guarantee that these policies would be carried out with the utmost energy. It was through pressure exerted by him that the Minister of the Interior Jaross was appointed, and his two State Secretaries, Laszlo Endre and Laszlo Baky, were put in office, the last two having command of the gendarmerie and the police, and the first having the mandate to solve the Jewish question. Both Endre and Baky had long been known as fanatic Nazis completely loyal to the German Reich.

The defendant contends that he cannot be held guilty because he could not commit war crimes against Hungarians inasmuch as Hungary was a military ally of Germany. He relies upon a statement made by the prosecution in Case 1 (the Medical Case).* We have examined the record wherein the following language is found (*mimeographed transcript of Medical Case, p. 10723*):

> "The laws and customs of war apply between belligerents, but not domestically or among allies. Crimes by German nationals against other German nationals are not war crimes, nor are acts by German nationals against Hungarians or Rumanians."

This language has been taken out of its context. Counsel for the prosecution was, at the time, discussing Article II, [paragraph] 1(*b*), *War Crimes*, and not Article II, paragraph 1(*c*), *Crimes against Humanity* (Control Council Law No. 10). The latter declares criminal—

> "Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture,

* United States *vs.* Karl Brandt, et al., Volumes I and II, this series.

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rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds, whether or not in violation of, or against, the domestic laws of the country where perpetrated."

We readily concede that acts committed by German nationals against other German nationals or German nationals against the nationals of one of its allies do not constitute a violation of the laws or customs of war, but count five is not concerned with those; it deals with crimes against humanity, irrespective of the nationality of the victims.

The question here is whether or not the defendant was a principal or an accessory to, took a consenting part in, or was connected with plans or enterprises involving the commission of a crime against humanity. The deportation of Jews from Hungary, either for slave labor or for purposes of mass extermination in the gas chambers of the concentration camps was directed to a class extinction, not by reason of individual or mass action, but solely because of their religion. It may well be, and indeed it would be surprising if it were not true, that many Jews who had suffered the tortures and persecutions of the Nazi regime, resented such treatment, and wherever opportunity arose fought back with all the means at their disposal. It may be conceded that, insofar as such individuals were guilty of espionage or sabotage or other offenses cognizable under the rules and customs of war, they were subject to prosecution and punishment, but no attempt was made to single out or prosecute the guilty, and mass action was taken without distinction against both the guilty and innocent. Men, women, children, the babes in arms, school children, the aged, the invalids were deported to slave labor and to death. No justification or excuse can be offered for such action. It was carried on as a part and in aid of German aggressions and crimes against peace.

Moreover, it is clear that, among the Jews deported from Hungary, there were refugees from territories occupied by Germany in the course of its numerous aggressions. In Case 3 (the Justice Case) a number of the defendants were convicted for crimes committed by them upon German nationals, because such crimes were committed pursuant to and in connection with crimes against peace. In our opinion this defense is without merit and we so hold.

On 14 April 1944 within a month after he had taken over Hungary's affairs, Veesenmayer reported (*NG–1815, Pros. Ex. 1808*) to von Ribbentrop that Sztojay had given him a binding promise that by the end of the month 50,000 Jews fit for work

would be placed at the disposal of the Reich; that all Jews between the ages of 36 to 48 not liable to labor service in Hungary would be registered and drafted, and that by this means another 50,000 Jewish laborers would be deported by the end of May; that from 100,000 to 150,000 Jews would be organized in labor battalions in Hungary at the same time.

On 23 April he again reported (*NG–2233, Pros. Ex. 1811*) that in the Carpate area, the work of putting Jews into ghettos had begun and 150,000 Jews had been evacuated, and that by the end of the week the number would probably be 300,000; that the work would then proceed into other districts and finally into Budapest; that the Jews would be transported at the rate of 3,000 per day beginning 15 May, and that Auschwitz (the notorious extermination camp) was their destination; that the transport by marching was impractical, because of difficulties of food, shoes, and guarding.

On 25 May 1944 von Thadden of the Foreign Office reported (*NG–2190, Pros. Ex. 1818*) to Wagner a visit which von Thadden had made to Budapest and where he conferred with Veesenmayer, Hezinger, Eichmann of the SS, and others. He reported that Eichmann informed him that up to noon on the 24th, approximately 116,000 Jews had been deported to the Reich, 200,000 more were assembled awaiting deportation, coming mostly from the northeastern parts of Hungary; that similar concentrations had been executed in the south, southeast, and southwest, and on 7 June concentrations would start in the provinces north and northwest of Budapest, and that by the end of June they hoped to begin the concentration of the Jews living in Budapest; that the round-up would amount to about 1,000,000, possibly even more, one-third of whom should be able to work and would be taken over by Sauckel, Organization Todt, etc., in Upper Silesia, and only 80,000 Jews, able to work, would remain in Hungary under Honved guards and be employed in the armament industry there.

The defense that these deportations were being made in order to put the Jews to work in the Reich is effectively disposed of when, from the report itself, it appears that only one-third were those capable of work.

The report is further illuminating upon the relationship existing between Veesenmayer and Hezinger and Eichmann of the SS. The Foreign Office had proposed to recall Hezinger, who was the Jewish expert from the Foreign Office attached to the Embassy. Senior Councillor of Legation Feine informed von Thadden that Hezinger was indispensable. Veesenmayer told him that, while he realized that Hezinger was only loaned to him, he

must make clear that he, the Minister, had an extremely difficult job, that cooperation with the SS office did not always work smoothly, and that Hezinger not only knew how to carry out his assignment to perfection, but he had established such friendly relations with the office of executive authorities that he was the only one who gave Veesenmayer complete satisfaction and in whose field of work no trouble had thus far occurred; that he was afraid that Hezinger's recall might also cause trouble in this field, and would be very grateful if Hezinger could stay with him for another 3 or 4 weeks, but if this was impossible, he would first use Grell mainly for the work on the Jewish problems.

It further appears from this report that Eichmann was anxious to have Hezinger remain so that no really serious mistakes would occur in the treatment of foreign Jews. The attitude thus expressed by Veesenmayer is in direct contradiction to the testimony which he gave, namely that Hezinger was not subordinated to him and that he was not informed in detail about his activities.

If, as Veesenmayer now claims, these actions were originated and carried out by Eichmann and Winkelmann* of the SS, it seems most extraordinary that Department Inland II, which at that time was the competent department in the Foreign Office for Jewish affairs, should find it necessary to inform Eichmann, the alleged originator of the planned deportation, of Veesenmayer's reports. But such was done.

The jealousy and bad feeling growing up between Veesenmayer and the SS and Security Police Leaders in Budapest may well be true, and there are strong indications of the fact. The latter had often, as far as they were able, attempted to assert independent authority and power which, in fact, they did not possess. This was characteristic of the SS. The fight for power and authority, the attempts to keep all jurisdiction one had and to constantly reach out for more, even at the expense of another agency, was the common, almost accepted thing in the Nazi Reich. But it is also true that in almost every case it was not a contest over objectives, or an attempt on one side to defeat and on the other to further the savage programs of Nazi policy, but was one for personal prestige, and increase of influence and power, and authority to implement and carry out those plans.

On 13 April 1944 Veesenmayer submitted to von Ribbentrop a draft (*NG–5646, Pros. Ex. 3725*) of the address he proposed to make when he presented his credentials. Arrogantly it referred to the unusual circumstances which had caused his appointment;

* In its original judgment the Tribunal used the name Winkler instead of Winkelmann. This was amended by the Tribunal Order of 12 December 1949 on the motion of the defendant Veesenmayer to correct alleged errors of fact and law in the judgment. See section XVIII D 6.

that "to hold back the enemy, German troops were on Hungarian soil" and thus many questions, unknown in peacetime and insoluble by methods theretofore used, had arisen and "new ways will have to be found;" that he was convinced that the Hungarian people, after elimination of hostile and seditious elements, would be faithful to its glorious history and conscious of the common fate which it had shared with the German people for hundreds of years, and gather all the powers of the state under the leadership of His Excellency, and fight for the common victory, in its proven comradeship of arms. "I consider it my task to help Hungary according to the best of my ability on this road, carrying out the intentions of my Fuehrer, and I want to express the hope that Your Excellency will support me fully and completely in the execution of my tasks."

This, apparently, was too much, even for von Ribbentrop, who was not noted for delicacy or finesse in diplomacy, and the offending phrases and sentences were eliminated.

It is now asserted on Veesenmayer's behalf that he did not prepare the objectionable address, but it was the work of his deputy Feine, a particularly experienced civil servant well-versed in international law. One of two things, however, is obvious. Either Feine was not the author, or he was not an experienced civil servant versed in international law. The proposed address follows the procedures and policies expressed by Veesenmayer in his previous reports to the Foreign Office too closely to permit us to believe that he did not have at least a guiding and controlling hand in its authorship. In any event, he signed it.

On 20 March Veesenmayer reports a lengthy conference with Horthy (*NG–5522, Pros. Ex. C–438*), who apparently had refused to appoint Imredy, but said that a government headed by Sztojay or Csatay would be "tolerable" for him, but that he must leave open the question of how long such a government should remain in office; that Veesenmayer had pointed out to Horthy that he considered an interim solution to be politically unwise and impossible in point of time; that the period of eternal compromising was past and that he, Veesenmayer, was under the impression that the Regent was trying to gain time, which was not in accordance with the will of Hitler and the Reich government. His report charges Horthy with lying and that he was no longer physically able to keep up his duties.

It appears that on 22 March 1944 Veesenmayer reported to Ritter that (*NG–5526, Pros. Ex. C–440*)—

> "Alarm occupation of the castle with distribution of troops will take 3 hours according to army group report. It is hardly

possible to surround the castle effectively in view of its cellars and unknown secret exits."

This does not evidence a decision to work with Horthy, as the defendant now claims, but a search for means to compel him to do the defendant's will. One does not discuss the seizure or surrounding of a castle occupied by the head of state when intent upon peaceful negotiations and cooperation.

The final selection of Sztojay as Prime Minister represented a compromise brought about by the belief that the time was not yet ripe to take the final step of removing Horthy from office, which came later, and hope had not yet been abandoned that Horthy would become entirely subservient to Veesenmayer's wishes and be dependent on German support for continuance in office. Although Sztojay was a tolerable appointment to the Regent, the Minister of the Interior and his State Secretaries were pro-Nazi and wholly compliant to the demands for the deportation of the Jews. The Ministry of the Interior had demanded command of the Hungarian police and gendarmerie, and it was through the cooperation of these officers with the SS that the Jews were seized, concentrated, and finally deported to slave labor or death.

It is apparent from Veesenmayer's testimony and from the documents that throughout the time he was in Hungary a struggle for power was going on between von Ribbentrop and Himmler; that von Ribbentrop's foreign policy involved retaining Horthy as the nominal head of state and achieving German aims through the subservience of the Hungarian Ministers, who had been selected and approved by the German Reich, in order that the outside world should not realize that the real governing powers lay in the Nazi government. On the other hand, Himmler cared nothing for finesse or outward appearances.

Veesenmayer endeavored to carry out von Ribbentrop's policy and from time to time clashed with Himmler and the SS, who desired to proceed with greater speed, without regard for the repercussions which would arise if Horthy finally rebelled.

In July 1944 Horthy forbade the further deportation of Jews, and Veesenmayer proceeded to reproach him for this and informed him that dismissal of the Sztojay government and the proposed arrest of certain of its members who had carried out anti-Jewish measures would be regarded as a breach of Hungary's obligations to the Reich, and that Hitler would immediately recall the Reich Plenipotentiary, Veesenmayer, and take measures which would preclude a repetition of such events in Hungary once and for all.

The ultimatum (*NG–2739, Pros. Ex. 1824*) thus presented by the defendant was in accordance with the detailed, graphic instructions which he received from von Ribbentrop. The defendant insists that he omitted informing Horthy of the threats which were contained in his instructions. This, however, the Regent denied when on the witness stand, and we have no doubt that either Veesenmayer read his instructions word for word or gave the substance of them. He made perfectly clear what would be the result if Horthy attempted to carry out his plans.

These threats were effective for the time being, but on 25 August 1944, the day Rumania signed an armistice, the Regent thought himself strong enough, and Germany's position sufficiently weak, to enable him to dismiss Sztojay and appoint General Lakatos as Premier. Again Veesenmayer intervened and attempted to have pro-German elements included in the Cabinet and government, but, to a large extent, he was unsuccessful. The Lakatos government remained in office until about, approximately, 15 October 1944, when it was ousted by force, the Regent deported from Hungary and imprisoned in Germany. Szalasi, head of the Arrow Cross movement and a rabid anti-Semite, was appointed in his place. After Szalasi became Prime Minister, about 16 October 1944, deportations were restarted and tens of thousands of Jews, mainly women, were forced to march on the highways leading from Budapest to the German border in rain and snow, without food and with no sleep. Thousands of them died on the way or were shot because they could not continue the march.

Lakatos gave an affidavit with regard to the events of these times. He was not submitted for cross-examination, and we therefore give the statements in his affidavit little effect, except insofar as they may be corroborated by other evidence in the case. This corroboration is, in part, furnished by the testimony of Dr. Rezso Kasztner, a Hungarian Jewish lawyer who, throughout all this terrible period, was President of the Zionist organization of Hungary, and whose organization kept itself currently informed of the political and racial developments in Hungary. Checking his story with what is revealed by the documents of the Foreign Office, including Veesenmayer's own reports, the essential accuracy of his information is verified and substantially corroborates the essential parts of General Lakatos's affidavit. He makes clear that with the appointment of Szarosz as Minister of the Interior in the Sztojay government, and the appointment of the two State Secretaries, Endre and Baky, and their cooperation with the SS, the deportations became merely routine, administrative work.

Kasztner aptly describes the situation (*tr. pp. 3647–3648*).

"Q. Do you mean by that, Witness, that the defendant Veesenmayer, was not concerned with the execution of the Jewish deportations which (I will leave open for the moment) was carried out by Jaross, Baky, Endre, Eichmann, or Winkelmann?

"A. My dear colleague, I do not suppose that you will imagine that a man as intelligent as Veesenmayer would formally carry out his mandate as Plenipotentiary and Minister of the German Reich in such a way as to transgress his limits by interfering with the executive. He could not and should not have done it under any circumstances and he did not need to. As I said this morning, by appointing a suitable government in Hungary, and laying down the general political directives for it, further activity and closer activity concerned with greater details of the executive was no longer necessary. He was, if I may say so, the spiritual author, but he was certainly not the executor."

No one reading the record of this case can be under any doubt but that Veesenmayer was a conscious and consenting participant in the deportation of Jews from Hungary; that he knew what their fate would be; and that he was a willing, zealous, and leading participant therein.

Alleged diplomatic immunity.—Veesenmayer asserts the legal defense that inasmuch as he was actually accredited as Minister and Plenipotentiary General for the Greater German Reich in Hungary, his actions were privileged and he is exempt from punishment.

It has been a long-recognized rule that within certain well-recognized limits a diplomatic representative is immune from prosecution by the country to which he is accredited. The rationale is well stated by Hackworth.*

"The reason of the immunity of diplomatic agents is clear, namely, that governments may not be hampered in their foreign relations by the arrest or forcible prevention of the exercise of a duty in the person of a governmental agent or representative. If such agent be offensive and his conduct is unacceptable to the accredited nation, it is proper to request his recall; if the request be not honored he may be in extreme cases escorted to the boundary and thus removed from the country. And rightly because self-preservation is a matter peculiarly within the province of the injured state, without which its existence is insecure. * * *"

* Hackworth, Green H., Digest of International Law (U. S. Government Printing Office, 1942), volume IV, page 513.

This doctrine, however, has not remained wholly unquestioned. (Stanhope, History of England, I, p. 171.)

"A foreign minister who conspires against the very government at which he is accredited has clearly violated the law of nations. He is, therefore, no longer entitled to protection from the law of nations."

In any event, the immunity continues only so long as the diplomatic agent is accredited to the country, plus such additional time as may be necessary to permit him to leave its boundaries.

The rule is thus laid down, on the authority of Professor Binding, himself a German.

"* * * The incompetence of the local courts is *ratione personae* and ceases when the person concerned loses the status to which immunity from jurisdiction is attached.

"Exterritoriality results in freedom from court process; it operates procedurally, not substantively; in principle it does not result in freedom from punishment, nor exemption from the rules of law, but in non-liability to prosecution. * * * The former (persons enjoying exterritoriality) are immune from prosecution only for the duration of their exterritoriality and certainly during the same period, also, for all earlier acts falling under the criminal laws of the state of residence: after conclusion of the exterritorial relationship they are liable to prosecution for all crimes committed by them while enjoying exterritoriality and previously, insofar as legal action has not yet been outlawed by the passage of time."

In the Draft Convention on Diplomatic Privileges and Immunities of the Harvard Research in International Law, 1932, is found the following:

"*Article 29.—Termination of Privileges and Immunities.*—When the functions of a member of a mission have been terminated, a receiving state shall continue to accord to him and to the members of his family the privileges and immunities provided for in this convention, until such persons have had reasonable opportunity to leave the territory of the receiving state."

In its Comment upon the subject, we find the following:

"*Comment.*—Article 16 undertakes to fix a time for the beginning of immunity and protection. This article undertakes to determine the time at which immunities terminate. Both are based upon long practice.

"The functions of a member of a mission may be terminated (a) by the termination of the mission; (b) by the death or

abdication of the sovereign, in case the sending state is a monarchy; (c) by revolution in the sending state, as a result of which a new government is established; and (d) by the recall of a member. It is intended that the present article apply to each one of these situations."

Again, in the Cambridge Draft of the Institute of International Law, 1895, the following proposed codification of the recognized practice is found:

"*Article 5.*—It (the privilege of inviolability) shall continue to be effective as long as the minister or diplomatic official remains, in his official capacity, in the country to which he has been sent.

"It shall hold good, even in time of war between the two powers, for as long a time as is necessary for the minister to leave the country with his staff and his effects."

Finally, it was held in the case of the former Japanese Ambassador, Oshima, that—

"Oshima's special defense is that in connection with his activities in Germany he is protected by diplomatic immunity and is exempt from prosecution. Diplomatic privilege does not import immunity from legal liability, but only exemption from trial by the Courts of the State to which an Ambassador is accredited. In any event this immunity has no relation to crimes against international law charged before a tribunal having jurisdiction. The Tribunal rejects this special defense."

Here as well the defendant is charged with violations of international law. The evidence establishes he is guilty of such violation. He is not being tried by Hungary, the state to which he was accredited; his term of office has long since expired; he surrendered himself not to the Hungarian authorities, but to the American military authorities. None of the grounds for exemption upon which he bases his plea here exist, and his special defense with respect to his diplomatic exemption is without merit.

Slovakia.—On 13 June 1944 Veesenmayer requested the Foreign Office to bring pressure on the Slovakian Government (*NG–5576, Pros. Ex. 3714*), demanding that they indicate their fundamental disinterest in Slovakian Jews in Hungary. The reason for this request was that the Slovakian Legation in Hungary, as well as the Slovakian Minister of the Interior, had informed the Hungarian Government and the SD Referent of their special interest in the repatriation of Jews of Slovakian nationality who were

then being evacuated from Hungary. Veesenmayer stated that this not only disturbed but also complicated the evacuation of them from Hungary, but also gave the Hungarian Government the impression that Slovakia had adopted an attitude fundamentally opposed to the solution of the Jewish problem.

Hans Ludin, the German Minister to Slovakia, deposed that in December 1943 the defendant Veesenmayer called on him at the Embassy and informed him that, by special order of the Reich Foreign Minister, he was to visit the Slovak State President with the object of deliberating with him upon the further deportation of the Slovak Jews; that after his visit to Dr. Tiso, Veesenmayer reported the result; namely, that the Slovakian State President had agreed to the proposed date, 1 April, and until then all the remaining Jews not having special status granted by the State President were to be deported.

On 22 December 1943 Veesenmayer reported to the Foreign Office the result of his negotiations with Tiso (*NG–4651, Pros. Ex. 3703*), that of the remaining Jews in Slovakia, 16,000 to 18,000 would be sent to Jewish camps within the next few months; that Minister Ludin was to come to an agreement with Tiso during the next few days with respect to the execution of the entire operation; that Tiso did not and could not, at the moment, fix any definite date, so Veesenmayer suggested completing the operation by 1 April 1944 at the latest, and was assured by Tiso that he could make great efforts to adhere to that date; that for reasons of expediency, Veesenmayer refrained from mentioning the question of the baptized Jews, but in talking the matter over with Minister President Tuka, the latter said he would insist that the question be dealt with anew with the stipulation that the baptized Jews must be accommodated in a special camp in order to avoid difficulties with the Church, and promised his full support to the measures agreed upon between Veesenmayer and Tiso.

Dieter Wisliceny deposed that he met Veesenmayer in Bratislava in December 1943 and on that occasion Veesenmayer paid a visit to President Tiso; that in the conversation with Veesenmayer in the anteroom of the German Ministry, he was informed that Veesenmayer was to see Tiso on Hitler's orders, and would then take the opportunity of broaching the subject of Jews in Slovakia; that Veesenmayer asked for a statistical report as to how many Jews were still living in Slovakia, and how many of these had a special permit, and Wisliceny handed this report over to Veesenmayer; that after the latter's visit to Tiso, Wisliceny saw Veesenmayer, who reported that Tiso had promised to screen all special permits by the end of April 1944 and settle the Jewish

question finally; and that Veesenmayer said that he would put his foot down with Tiso on this question.

Veesenmayer's explanation is that his visit to Tiso and Tuka was not primarily on the Jewish question, but with respect to other political events, particularly the channels which the Hungarian Government "had through Slovakia into Russia, with the idea of making peace, and that the Jewish mission was a camouflage" of his real objectives. He admits, however, making the report before-mentioned, and does not deny that the matters therein contained were in fact discussed and agreed upon. He claims, however, that the proposed deportation did not take place, and we have been able to find nothing in the record to indicate that it was actually carried out.

There is evidence that after the Slovakian revolt in September 1944, many of the remaining Jews in Slovakia were killed, but this apparently has no connection with Veesenmayer's visit in December 1943. Therefore the documents relating to Slovakia, while they tend to prove knowledge of the plan and throw some light on Veesenmayer's attitude toward Slovakian and Hungarian Jews, cannot constitute a substantive offense.

Serbia.—On 8 September 1941 the Foreign Office received a wire from Belgrade, signed by Veesenmayer and Benzler (*NG–3354, Pros. Ex. 1714*), stating that it had been proved that Jews were accomplices in numerous acts of sabotage and revolt, and therefore it was urgently necessary to see to it that at least all male Jews be quickly placed in custody and removed, suggesting that they be deported, sent down the Danube, and unloaded in Rumanian territory. The Foreign Office determined that this could not be done and Luther so informed the Plenipotentiary of the Foreign Office at Belgrade.

On 10 September (*NG–3354, Pros. Ex. 1714*) Veesenmayer and Benzler again wired the Foreign Office that "a quicker and Draconian solution of the Jewish question in Serbia is a most urgent and practical necessity," and requested directives from the Foreign Office in order to be able to put the utmost pressure on the military commander of Serbia, saying that it would be most advantageous if Himmler would issue an identical order to the Chief of the Einsatzgruppe of the Security Police and Fuchs of the Security Service.

In the final analysis, Rademacher was sent to Belgrade to ascertain whether these Jews could not be taken care of on the spot. He found that 2,000 had already been shot as reprisals for attacks on German soldiers, and states "in the course of the practical executions of this order, at first the active Communist leaders of Serbian nationality—about fifty of them—and then

always Jews were shot as Communist instigators; that there were not 8,000 to begin with, but only 4,000, and only 3,500 could be shot, as the remainder are needed by the health police to keep up the health service and discipline in the ghettos which had been established."

As the result of Rademacher's negotiations with the experts on the Jewish question, Sturmbannfuehrer Weimann and Fuchs, it was agreed that the male Jews would be shot by the end of the week, which would solve the problem, and that the rest of about 20,000 Jews, women, children, old people, as well as about 1,500 gypsies, except the males who were to be shot, would be concentrated in a ghetto in the gypsy sector of Belgrade, where a minimum of food would be guaranteed for the winter, and as soon as the question of the final solution of the Jewish question was reached, and the technical means were available, the Jews would be deported by water to the reception camps in the East. Thus, the quicker and more Draconian solution mentioned by Veesenmayer and Benzler became an accomplished fact.

Veesenmayer's excuse is that he had been sent to Belgrade to make an investigation of the partisan movement which had started there, and the advisability of organizing a Serbian government to alleviate the situation, and that he was only called in by Benzler because of his investigation and knowledge of the partisan movement.

This excuse is without merit. He signed the telegrams; he consulted with Benzler regarding the proposed deportation.

However, it did not take place; other agencies intervened, and, as we have seen, adopted measures even more harsh. For those he cannot be held responsible.

SCHELLENBERG

Schellenberg joined the Party in 1933. In 1934 he became a member of the SD and was assigned to the Office of Domestic Intelligence Service. In 1939 he became Chief of Amt IV-E, which had charge of domestic counterintelligence. In 1941 he was transferred to and became Chief of Amt VI, RSHA, which dealt with foreign intelligence.

The prosecution contends that Schellenberg took an active part in the preparations for the work of the notorious Einsatzgruppen of the East. The record reveals that in the discussion between Mueller, Chief of Amt IV, RSHA, and Quartermaster General Wagner of the Wehrmacht, an impasse arose regarding the use of these corps in the East and their jurisdiction and competence, and Schellenberg, who was a lawyer by profession, was detailed

to take up these discussions and attempt to compromise the difference between the Wehrmacht and the RSHA. This he did, and when his final draft of the agreement had been completed Heydrich and Wagner signed it. He asserts that when the two men came to discuss the details of the plan, he was notified to leave the room, and therefore was not informed of the full scope of the activities of these groups, namely, to engage in mass exterminations of the local population and the Jews.

He admits that some time later he attended a meeting in Berlin at which were present counterintelligence officers of the Wehrmacht, but states that this meeting continued over a considerable period and he left several days before it concluded, and he assumed that after he left persons then present were probably informed of the work which the Einsatzgruppen were to carry on.

While we doubt that Schellenberg was as ignorant of the mission of the Einsatzgruppen as he now asserts, the proof that he had knowledge does not convince us to a moral certainty. We therefore give him the benefit of the doubt, and as to this incident we acquit him.

It is also contended that he was deputy to Mueller, Chief of Amt IV, RSHA. While on one or two occasions he signed in that capacity, the record discloses that Mueller had no regular deputy and only when he was absent from his office did one or another of his section chiefs sign communications in his name.

The prosecution further contends that Schellenberg, as Chief of Amt VI, himself, dispatched an Einsatzkommando to White Ruthenia, but we are satisfied that this group dealt with geological and other scientific research and had no connection with crimes against humanity.

Serbian Jews.—While Schellenberg's office was informed of the slaughter of Serbian Jews, it does not appear that Schellenberg took any part in this other than possibly informing Luther, at the latter's request, of Heydrich's return to Berlin, as Luther desired to have a conference with Heydrich regarding the deportation or other disposition of Serbian Jews. The evidence of Schellenberg's guilt is not sufficient, and we acquit him with respect to this incident.

Einsatzgruppen.—Copies of Operational Situation report, No. 128, of the Einsatzgruppen, dated 3 November 1941 (*NO–3157, Pros. Ex. 2058*), were distributed to Schellenberg's group, and to both Aemter IV and VI. It covers approximately 4 months' operations. There the program of murder and extermination is set forth in detail. It callously states that approximately 80,000 persons had been liquidated, describes the objections raised by certain commanders of prisoner-of-war camps, how they were

overcome, and of the plans for further operations freed from interference by officers of the Wehrmacht. These and the other reports of the Einsatzgruppen were distributed to Schellenberg's office. His claim that he did not see or paid no attention to particulars in which his office was interested cannot be believed.

We have examined the reports and even the most casual glance would bring out the horrible details. Furthermore, unless we are to assume that his division was so inured to reports of mass murder and that these were no longer deemed worthy of notice and comment, it is inconceivable that his section chiefs would not have called his attention to them. His claim of innocence is wholly incredible. But there is no evidence that he participated directly or indirectly in these atrocities.

Operation Zeppelin.—On 13 October 1941 (*NO–3421, Pros. Ex. 2059*) Mueller, Chief of Amt IV, confirmed his telegraphic order regarding the use of Soviet Russians in concentration camps for labor and for the execution of designated Russian prisoners of war.

On 25 October 1941 (*NO–3421, Pros. Ex. 2059*) he issued a directive stating that for the purpose of selecting suitable informers of the Russian intelligentsia, delegates of Amt VI, Schellenberg's division, would be assigned to the Einsatzkommandos of the Sipo and SD and, during their activities in the prisoner-of-war camps, these delegates would be subordinated to the leadership of the Einsatzkommandos. In addition, the order made it the duty of these delegates to collect information about political, economic, and cultural conditions in Russian areas not yet occupied, and that Soviet functionaries who were deemed suitable were to be transferred to Berlin and put at the disposal of Amt VI. Both of these documents were distributed to Amt VI and Amt IV. This operation was known as "Operation Zeppelin."

The counsel for prosecution contends that the use of prisoners of war for espionage and other like purposes against their own nation, even if voluntary, is a violation of international law and of the Hague Convention Respecting the Rules and Customs of War. (Art. 6, ch. II [Hague Convention No. IV, 18 Oct 1907]; and Art. 31, ch. VI, Geneva Convention [Prisoner of War Convention, 27 Jul 1929].) No other authority other than the Articles themselves has been cited to us, and we have been unable to find any. Ordinarily a national of a country, whether or not he is in military service, who gives aid or comfort to the enemy, is a traitor to his country. But we have never before heard it suggested that the enemy who takes advantage of his treason is guilty of a breach of international law. We hold that the cited prohibitions of the Hague Convention prohibit the use of pris-

oners of war in connection with war operations, and apply only when such use is brought about by force, threats, or duress, and not when the person renders the services voluntarily.

We come now to more serious evidence against Schellenberg with respect to Operation Zeppelin. In a number of instances persons who volunteered were thereafter executed, apparently without trial or notice of any offense of which they were alleged to be guilty. If true, this was a flagrant violation of international law. It appears from the testimony of the witness Smolen that he was a political prisoner at the Auschwitz concentration camp from June 1940 to 1941, and was employed as a "responsible prisoner" in the reception office of the political department of the camp which was not under the jurisdiction of the camp commander, and that this political department had jurisdiction over Block 11 of the camp; that approximately 200 Russians were executed in that block; that these prisoners arrived under escort of SD men; the normal entries regarding them were not made in the records; they were not given the usual prison numbers, and that the documents which they carried bearing their personal data, were immediately delivered to the SD upon their arrival; that these men gave no information about themselves and did not have the slightest idea of the fate which awaited them; that they were killed by a shot in the neck within a few days of their arrival; that the papers for their commitment bore the entry "Zeppelin Geheimnistraeger" the latter term meaning "one in possession of secret information."

Exhibits 2065, 2066, 2068, and 2069 [Documents NG–4723, NO–5445, NO–5446, and NG–4724, respectively] are the record of some of the men thus executed. We are satisfied that the fifty men mentioned in Exhibits 2063 and 2064 [Documents NG–4721 and NG–4722, respectively] are identical and refer to one operation.

With regard to the cases of Plewako, Kopyt, and Koschilew, the reports state that as a result of various things which happened in the meantime at special camp Wissokoje they were given "special treatment" on 25 November by order of SS Brigadefuehrer Naumann of Einsatzgruppe B. More can be seen from the reports of SS Obersturmfuehrer Sakuth to the RSHA, Amt VI, Department 6–C–Z. In the case of Kosin, it appears that he was sent, by order of Amt VI, to Einsatzgruppe E–B for special treatment. "Special treatment" in the jargon of Nazi Germany meant death, as has been fully established before these tribunals.

Naumann testified in the Ohlendorf case that in this camp there was a house put at the disposal of Amt VI which was not sub-

ordinated to him; that he had no right to order the executions of the inmates thereof, but that it was up to Amt VI to do so.

Schellenberg first testified that he knew nothing about these executions, but later, when faced with the documents, contended that the men were killed because they were traitors to Germany. The first three men were executed on 25 November 1942, and Kosin on 5 December 1942, and the reports were all made on 5 December 1942. The reason given for Kosin's death was that he had run away without reason from the SS special camp Wissokoje.

Exhibits 3465, 3466, 3467, and 3468 [NG–5220, NG–5221, NG–5222, NG–5223, respectively] disclose that two Russian prisoners of war who were activists [Aktivisten] employed by Amt VI and who were hospitalized for tuberculosis were thereafter ordered by Weissgerber of Amt VI to be given "special treatment."

Schellenberg insists that he had no knowledge of these last sentences, but that Weissgerber was one of his assistants, as was Grafe. Thus, we are asked to believe that responsible officers of his division, on their own initiative, issued orders for the execution of large numbers of people without his knowledge and without his orders, general or specific. The defense attempts to explain this by affidavits that the head of Operation Zeppelin, although a subordinate of Schellenberg's, acted independently and did not often consult with him, but we view such testimony with suspicion and with great caution. It does not square with Schellenberg's character and temperament as disclosed on the witness stand, or by the proof offered in this case. If Weissgerber and Grafe ordered these executions, their action can only be accounted for if the defendant had permitted an utterly callous attitude toward human life to grow up and become established in his division, or if it was a practice so usual that it was unnecessary to consult him. It must be remembered that these were not isolated instances, but at least 200 men were thus executed. In neither case can he avoid responsibility.

With respect to the Koshilew case, the defendant offered parts of Document NO–5446, which were not offered by the prosecution, as part of Exhibit 2068 and others, to prove that Koshilew was a spy, and furthermore, that this was a matter which Amt IV handled and not Amt VI.

We have considered these documents. It appears that on 16 January 1942 Koshilew was picked up by the army as a suspected spy, but that the Wehrmacht was not certain whether he was a Russian or a German spy. He was interrogated at least twice and maintained that he was not a Russian spy, but that he

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worked with the Gestapo. The army made inquiries of Einsatzgruppe B, the Secret Police, and the Gestapo. This was reported to Amt IV, where it was received on 28 January 1942. On 27 March 1942 Amt IV–1–B informed Einsatzgruppe B that neither Amter IV nor VI knew of this man or his alleged contacts. If true, then obviously the man was a spy and subject to the penalty of being caught as such. But it was not.

Exhibit 2068 [*Document NO–5446*] plainly shows that Koshilew had worked for Referent IV Einsatzgruppe in Smolensk since January 1942. Notwithstanding the denial of 27 March it also appears that at least as late as 1 July 1942 he had been trained at special camp Wissokoje, which was an Amt VI establishment, and that he was convinced that bolshevism must be destroyed, and that he voluntarily reported to the German staff on 16 January 1942. Obviously if in March, both Amt VI and Amt IV were convinced that the man was a spy, that his explanations were fabricated, and that he had never worked for the Gestapo, he would not have been placed and trained in the special camp, nor would there have been the slightest occasion to wait until December 1942 before executing him. The documents may prove other facts, but they do not prove or tend to prove that Koshilew was a Russian spy.

There is no direct evidence that Schellenberg had knowledge of these incidents, but it is clear that his Amt VI had knowledge of all of them and at least in one instance ordered the murder of these Russians. It was intended that these men should be used in the foreign intelligence work, that is, work behind the Russian lines, and this came within the jurisdiction of Amt VI, which selected these men and determined the field in which they should be employed. This is clear not only from the documents, but from Schellenberg's own testimony. When a question arose as to whether or not they were acting in good faith or were, in fact, Russian counterspies, Amt VI would have been deeply interested in the matter because it lay in their field. It is most unlikely that it would not have been consulted, and in the first instance determine the question of their loyalty to Germany and what their fate should be in the event that disloyalty was established. True, once the fact was determined, Amt VI might well have turned them over to Amt IV or some other agency for execution, but this does not lessen Amt VI's responsibility or exonerate it from complicity in the execution.

It is significant that when turned over for execution the records merely show that they were "persons in possession of secret information" and not that they were disloyal and had been found to be spies or counterintelligence agents of the Russians. Further-

more, they were totally ignorant of any accusations against them. It is a fair assumption that if, at the time they were turned over for execution, they had been regarded as spies, the words "persons possessed of secret information" would not have been used, and the words "spy" or "Russian agent" would have been inserted in their place. Their execution, under these circumstances, was merely cold-blooded murder.

A principal cannot be held criminally responsible for isolated criminal acts committed by his criminal subordinates in the execution of the latter's duty, but where there is evidence that this was an official practice, he cannot escape responsibility on the plea of ignorance, inasmuch as such ignorance was in fact nonexistent.

We hold that Schellenberg in fact knew of these practices and is guilty of the crimes as set forth.

SCHWERIN VON KROSIGK

The defendant Schwerin von Krosigk, during the entire Nazi regime, was Reich Minister of Finance and a member of the Cabinet. He was educated at the University of Oxford as a Rhodes Scholar, and he spent many years in the Ministry of Finance as a civil servant. He faithfully and with complete loyalty served the Weimar republic under several of its presidents. As time passed, his talents were recognized and he finally became director of its budget.

While von Papen was Reich Chancellor, Schwerin von Krosigk was appointed Minister of Finance. This appointment was not made due to any political or party affiliations.

Upon Hitler's seizure of power he was retained in office solely because of his expert knowledge of governmental finance, and not because he was looked upon either as a Party man or as being devoted to or convinced of the principles of national socialism; but we believe because Hitler felt that it was necessary that the Ministry of Finance be put in charge of one who was divorced from the inexperienced, ignorant, and predatory characters who had flocked to the Party; and he desired one who was incorruptible and would be content to carry out the functions of his office without interfering in matters of politics.

Irrespective of our evaluations of his subsequent official actions, in justice it must be said that Schwerin von Krosigk's private life was above reproach. He was and is a man deeply religious in character, devoted to his wife and family, simple in his tastes in life, and wholly free from any desire or ambition to use his offi-

cial position to enrich himself, a decided contrast to many who held high offices in the Reich.

The evidence clearly shows that he was not a member of Hitler's inner circle, that he was not one of his confidants, and that he came in touch with him but seldom before the war, and even less often afterward. During the course of the years he suffered many conflicts of conscience and was fully aware that measures to which he put his name and programs in which he played a part were contrary and abhorrent to what he believed and knew to be right.

It is difficult to understand what motives or what weaknesses impelled or permitted him to remain and play a part, in many respects an important one, in the Hitler regime. It is one of the human tragedies which are so often found in life. That he could have found or made an opportunity to retire and avoid being made a party to what was done, we have no question. In fact, he is one of the defendants who refused to avail himself of the claim that he was bound to remain in office and could not have retired or resigned had he so desired. He testified that at the time of the Crystal Week Pogrom against the Jews in November 1938 he then and always considered it and the measures which followed it to be a disgrace to the character of the German people.

He states that he remained in the Cabinet to raise the voice of reason and justice; that the events of the Roehm Putsch of June 1934* were a shock to him and emphasized in his mind the dangers inherent in the Nazi regime, but that many people urged him to remain in office so that he could act as a brake to the regime; that among others who held the same idea were some of the chiefs of the bourgeois ministries and old civil servants; that as head of the finance administration he desired his officials should keep their integrity; that the tax administration and other divisions should carry on their tasks with absolute justice; and that he felt as a Minister he could influence laws as they were drafted and after their promulgation exert a "defeating" influence; that in the subsequent years he was able, in certain instances, to help those who were threatened by injustice; that by staying in office he was able to save civil servants from the so-called "purge" law; that in the matter of the billion-mark Jewish fine, he was able to have the funds paid out by the insurance companies for losses incurred during the Crystal Week, and which could not be paid to the Jews themselves, applied upon their respective shares of the national fine.

* On 30 June 1934 the Roehm Purge or the "blood bath" took place. Ernst Roehm, Chief of Staff of the SA since 1931, together with other oldtime SA leaders, and other personalities whom Hitler wanted eliminated (such as General von Schleicher) were murdered by Hitler's orders. For further information on this subject see Case 3, Volume III, this series, and Trial of the Major War Criminals, op. cit., volume I, page 181.

He testified that he served the Hitler government initially because it was his duty as a civil servant so to do, and later because only from that position was he able to prevent injustices so far as his powers extended, and finally, because he thought it was a manifestation of cowardice to desert a sinking ship; that as he views the matter today in the full view of what he then did not know he deems his behavior politically erroneous, because under a dictatorship all decent and respectable work and all honest efforts must be finally brought under the service of the dictator, but all this comes from after-knowledge, and from the considerations then apparent and known to him, had he again to make the decision he would do as his duty commanded and in the same way.

He asserts that there were no financial considerations which impelled him to remain in office, and that had he resigned he would undoubtedly have had opportunities to obtain positions in the commercial and financial field which would in fact have been greatly to his financial advantage; that while he never became associated with any of the resistance groups because he felt he could be of more service in the capacity in which he served, he was personally and well acquainted with many of its members; that it was not until 1938, when the Crystal Week and the Sudeten crisis arose, that the resistance groups first came into being, and that after the outbreak of the war it was out of the question to resign, as everybody had to work in some position.

We are not inclined to be captious in considering and giving weight to his testimony, although we deem it altogether likely that what he says does not supply all of the lights and shadows regarding his reactions then.

As to many of the decrees, laws, and regulations which bore his name as cosignator, he relies upon the so-called "Federfuehrend" doctrine which may be succinctly stated thus, that where one Minister had jurisdiction over the major problem of the legislation or regulation involved and other departments were more or less incidentally concerned, the legal responsibility rested upon the first and the other cosignators assumed no responsibility for the measures other than those provisions which might immediately affect their jurisdiction, and finally, that the right to intervene or object was limited to questions relating to the propriety or practicability of the measures as it affected their sphere of action.

That the principle as thus stated is oversimplified, and the responsibility of cosigners underemphasized, we have no question, as we find in the record instances where the doctrine was rejected and where the proposed cosigner refused to put his name to the document.

There is a further limitation to this doctrine. Cabinet Ministers had the right to, and in fact did, freely express their views as to proposed legislation. In the early years of the Hitler regime Cabinet meetings were held in which the same right in principle existed. Even when the Cabinet meetings were discontinued, it was the practice, and in fact the invariable rule, that all proposed Reich governmental laws, regulations, and decrees were circulated among the Cabinet Ministers for their objections or suggestions. The defendant Lammers testified that, as to this type of regulation and decree, had a majority of the Cabinet expressed a negative view, Hitler would not have gone contrary to the views of the Cabinet. Lammers stated further, however, that negative views were never expressed and, therefore, the Reich government laws were adopted without dissent. Where the right to object or dissent exists, a majority dissent can only be ascertained if some responsible Minister is the first to register his objections. Under these circumstances one cannot sit supinely by and await the voice of another.

Our attention has not been directed to a single instance in which Schwerin von Krosigk filed his objection or dissent to any proposed Reich government law, regulation, ordinance, or decree which, if enacted, would constitute a crime within the jurisdiction of this Tribunal. Even were we inclined to accept the bald doctrine as of universal application, it could be applicable only to responsibility under German law and is unavailable as a defense to a crime under international law. Furthermore, it cannot be forgotten that, as to the offenses charged under this indictment, we do not deal with the ordinary processes or policies of national law nor even those where there is room for reasonable differences of opinion on political policy.

The offenses charged in this indictment deal with policies which fundamentally violate the common law and understanding of nations, and measures which shocked the consciences of mankind, from which there was, and is, a common revulsion, not limited to those who were or thereafter became political or armed foes of the Third Reich, but among peoples who by choice or necessity remained neutrals. As to those offenses the doctrine of "Federfuehrend" cannot be applied, although it may be considered with other circumstances in mitigation.

In our examination into the defendant's conduct we have endeavored to state and concede as far and as fully and as fairly as possible the foundations of his defense. We now proceed to ascertain and analyze the particulars of his conduct, that we may weigh profession against performance and general benevolence with specific acts. A troubled conscience is not a defense for acts

which are otherwise criminal. Nor can we hold that he who signed, cosigned, executed, or administered measures which violate international law, because he thought that acquiescence would enable him to maintain and safeguard the integrity of his department and the career of his officials or even the life or liberty of individuals whose cases came to his attention, but who by his actions condemned the great inarticulate mass to persecution, mistreatment, brutality, imprisonment, deportation, and extermination, escapes responsibility for his conduct.

Schwerin von Krosigk was present at the infamous conference of 12 November 1938 when Goering proposed to levy the billion-mark fine against the Jews. This was shortly after the assassination of von Rath in Paris and the riots and plunderings of the Crystal Week. When the question arose of adopting measures to prevent Jews from realizing on their securities and disposing of their assets, the defendant said (*1816–PS, Pros. Ex. 1441*):

"They have to be taken during the next week at the latest."

When Goering said:

"I shall choose the wording this way, that German Jewry shall, as punishment for their abominable crimes, and so forth, have to make a contribution of one million [billion]—that will work. The pigs won't commit another murder. Incidentally, I like to say again that I would not like to be a Jew in Germany."

Schwerin von Krosigk remarked:

"Therefore, I would like to emphasize what Mr. Heydrich has said in the beginning: That we will have to try to do everything possible by way of additional exports to shove the Jews into foreign countries. The decisive factor is that we don't want the proletariat system [Gesellschaftsproletariat] here. They will always be a terrific liability for us. (Frick: "And a danger.") I don't imagine the prospect of a ghetto is very nice. The idea of the ghetto is not a very agreeable one. Therefore, the goal must be, like Heydrich said, to move out whatever we can."

It is difficult to reconcile this language and the attitude which the defendant now claims he then took.

It was Schwerin von Krosigk who issued the ordinances of 21 November 1938 and of 19 October 1939, the first of which levied an assessment of 20 percent and the second an additional 5 percent on all Jewish property, by means of which the billion-mark fine was extracted, and it is he who issued the detailed instructions to the various Reich offices as to how and by what means payments could and should be made.

Regarding the billion-mark fine, two things are to be observed. First, it was not a fine or penalty for any act done or committed by the individuals who were compelled to pay it, nor was there the slightest ground for the charge that the assassination of von Rath was the result of a general Jewish plot. It was a deliberate confiscation of property and a typical piece of the persecution to which German Jews were subjected. Second, this fine and the proceeds of other confiscations of Jewish property were intended to be and were used for the purpose of rearmament and aggression. This statement was made at a meeting of the Reich Defense Counsel on 18 November 1938. There Goering said (*3575–PS, Pros. Ex. 106*) :

> "Very critical situation of the Reich Exchequer. Relief initially through the billion-mark fine imposed on Jewry and through the profits accruing to the Reich in the Aryanization of Jewish enterprises."

The defendant offers, and there is no justification or excuse for these measures.

Financing concentration camps.—As Minister of Finance the defendant furnished the means by which the concentration camps were purchased, constructed, and maintained, but it is clear that he neither originated nor planned these matters, and the funds were provided by him on Hitler's express orders. They were Reich funds and not Schwerin von Krosigk's, and he had no discretion with respect to their disposition. His act in disbursing them for these purposes was actually clerical, and we cannot charge him with criminal responsibility in this matter.

Deportation of Jews to the East.—When the cruel deportation of Jews to the East commenced, the defendant caused the necessary instructions to be given to the senior finance presidents throughout the Reich, who were his subordinates, to confiscate the Jewish property. The Jews were only permitted to have 100 marks and 50 kilograms of luggage apiece. These instructions stated that the administration and utilization of the confiscated property was within the defendant's competency, and he transferred it to the senior finance presidents to perform.

The defendant asserts that by his orders an accurate record of all property thus confiscated was kept, so that at some future time the owners might be able to reclaim it or be reimbursed therefor. Inasmuch, however, as the confiscation was complete and final, the possibility of reclamation or reimbursement could only occur as and when the Nazi regime ceased to exist. We deem his contentions in this respect to be an afterthought and without reality in fact or intention. His instructions spoke not only of

deportations which were then imminent, but of deportations which had already taken place, and further, of deportations which were to follow. The confiscations included not only money, securities, jewelry, furniture, clothing, works of art, but also real estate owned by Jews.

In March 1942 the defendant's deputy, by his order, instructed the finance presidents concerning the seizure of Jewish literature, cultural and artistic works, and ordered that they be turned over to the Operational Staff Rosenberg which was the collector and holder of this kind of loot.

On 25 November 1941 the defendant's State Secretary, Reinhardt, cosigned the Eleventh Supplement to the Reich Citizenship Law (*NG–2499, Pros. Ex. 1536*), which deprived all Jews living abroad of their citizenship, as well as those who might in the future take up ordinary residence there. The decree confiscated their property, together with the property of all those Jews who at the time of the enforcement of the decree were stateless if they were formerly Reich citizens. This decree was issued as a result of a conference in the Ministry of the Interior which the defendant attended.

Various other implementary decrees and regulations for the confiscation of Jewish property were from time to time issued or cosigned by the defendant's Ministry of Finance, including those which forfeited the property of Jews who had committed suicide to avoid deportation. This latter regulation was made retroactive to 15 October 1940. The defendant pleads ignorance as to the issuing of some of these documents, particularly the last, and it is not unlikely that in some instances this was true, but that such measures were taken independently by his subordinates without knowing that they were in accord with the policies of his department is, we believe, highly unlikely, if not wholly impossible.

The defendant Schwerin von Krosigk with the defendant Stuckart signed the decree of 2 November 1942 (*NG–180, Pros. Ex. 2453*) forfeiting citizenship and confiscating the property of all Bohemian-Moravian Jews who had established domicile abroad, and the defendant approved the draft of the Terboven Ordinance containing like provisions as to Norwegian Jews.

On 3 October 1939 the defendant Schwerin von Krosigk, together with Frick and von Ribbentrop, signed a decree (*NG–3744, Pros. Ex. 638*) providing for the forfeiture of citizenship of all citizens in the Protectorate who may have "acted in a manner detrimental to the interests of the Reich or which damaged its reputation," as well as those who did not return home when ordered to do so by the Minister of the Interior, and the decree included a forfeiture of their property as well.

On 4 October 1939 the defendant with Frick signed a decree (*NG–3745, Pros. Ex. 635*) which authorized the Reich Protector to sequestrate, for the benefit of the Reich, the property of individuals or associations who fostered tendencies deleterious to the Reich, and the Protector and the Minister of Interior were authorized to determine what tendencies were to be so considered.

On 24 October 1942 Reinhardt, for the defendant Schwerin von Krosigk, and the defendant Stuckart, for the Minister of the Interior, signed a decree conferring jurisdiction on the Protector, so far as nationals of the Protectorate were concerned, and on the Ministry of the Interior, in all other cases, to determine what activities should be declared "deleterious."

The occupation of Bohemia and Moravia and the formation of the so-called Protectorate were, as we have held, acts of aggression and in violation of international law. The enactment of these decrees was unlawful and was a part and parcel of the original unlawful act and scheme and plan.

It is apparent from the record that the defendant's Ministry of Finance was continually engaged in the work of taking over, disposing of, and realizing on Jewish confiscated property. The number and importance of these transactions and the fact that those engaged therein were responsible officials holding high office in the defendant's ministry, forecloses any possibility that they could have taken place without his knowledge and consent or subsequent confirmation and approval. They were a part, and an important part, of the Jewish persecutions carried on in the Reich and constitute violations of international law and agreements and crimes under count five.

Not only were these confiscations carried on in the Reich and against Jews of German nationality, but they were extended and came to include Jews of all nationalities living in Belgium or the Netherlands, or having fled from thence to occupied France and those who were residents of occupied France. The use to which much of this property was put was to realize foreign exchange for the Reich. They were all without justification, excuse, or legality. The officials of the defendant's ministry participated actively therein. These acts constitute violations of international law and crimes against humanity under count five.

When in June 1944 Himmler made application for the allocation of many millions for the demolition of the Warsaw ghetto, the defendant Schwerin von Krosigk expressed a willingness to make necessary installments on request, but coupled with it the stipulation that Himmler first use the values represented by goods found in the ghetto and inform him how many goods were to be utilized or had been so utilized. Himmler replied that the

movable goods thus confiscated had been realized upon and the proceeds paid into the Reich's Main Pay Office in favor of the Ministry of Finance under a special account "Max Heiliger." Into this account was deposited the money and the proceeds of the dental gold extracted from the exterminated inmates of concentration camps and the jewelry and precious stones of which they were robbed. The defendant testifies that he had no knowledge of this account and does not know why it was given a fictitious name. It is to be remembered, however, that approximately 33 tons of dental and other gold alone were shipped to the Reich Bank and credited to this account. That such an acquisition to German gold stocks should not have come to the attention of the Minister of Finance we find it difficult to believe, although it is quite possible that he was not advised of the fictitious name under which the account was carried.

Part of the jewels, gold, and works of art which were seized in Paris from the Rothschild family were turned over to and accepted by the defendant and utilized by his department for Reich purposes. He made some objections to this but these were overcome and he accepted the proceeds which amounted to 1,800,000 marks. This was stolen property to which neither the Reich, the Reich agencies which stole it, nor the Ministry of Finance which accepted it, had the slightest legal claim. It was seized, not because of any wrong done by the owners, but merely because they were Jews.

Final solution.—The defendant was cosigner with Frick, Minister of the Interior; Bormann, Chief of the Party Chancellery; and Thierack, Minister of Justice, of the 13th Regulation under the Reich Citizenship Law. By its provisions criminal acts by Jews were to be punished by the police and not by judgment of the courts; the provisions of the public penal law were no longer applicable to Jews; on death, the property of a Jew was confiscated to the Reich, and only his non-Jewish heirs residing in Germany became entitled to compensation for the loss of their inheritance; the Minister of the Interior, with the concurrence of the higher authorities of the Reich, was empowered to issue the necessary administrative and enforcement regulations and to determine to what extent those provisions should apply to Jewish nationals in foreign countries, and finally the regulation was made applicable to Bohemia-Moravia and to all Jewish citizens of the Protectorate. This regulation was enacted in the midst of the extermination program, and by it the bare shadow of legal form was thrown over the confiscation of property of Jews who were done to death in the East.

The defendant asserts that his only part in the program was to take possession and keep record of the property thus acquired; that Himmler told him the process had been in existence for some months and that he, Schwerin von Krosigk, thought there was nothing he could do, and he "was convinced that the official promulgation would guarantee greater protection under the law than if the police, as heretofore, had handled it anonymously."

This is an explanation which does not explain, and a justification which does not justify. It is difficult to say what comfort it would be to a Jew who was about to be murdered, or to his heirs who were about to be disinherited, to know that he was being robbed according to a tidy governmental regulation and that the receipts of the robbery were to go to the credit of the Reich rather than into the hands and pockets of the executioners.

Germanization program and DUT.—The connection of the defendant Schwerin von Krosigk in this program consists almost entirely of setting aside Reich funds for the purposes mentioned, and which we have heretofore discussed with respect to the defendant Keppler. We find no instance, however, where these things were done at his instigation or other than at a direct order of Hitler. Here again he did not provide or dispose of his own funds nor was he in a position to say whether or not they should be so spent.

It is impracticable, within the compass of this opinion, to recite all of the activities in which the defendant and his department engaged within the purview of the charges alleged in count five. It is clear, however, that notwithstanding the conflicts of conscience which he suffered, and of them we have no doubt, he actively and consciously participated in the crimes charged in count five. Neither the desire to be of service nor the desire to help individuals nor the demands of patriotism constitute a justification or an excuse for that which the evidence clearly establishes he did, although they may be considered in mitigation of punishment.

We find the defendant Schwerin von Krosigk guilty under count five in the particulars set forth.

COUNT SIX—WAR CRIMES AND CRIMES AGAINST HUMANITY, PLUNDER AND SPOLIATION

In this count, defendants von Weizsaecker, Steengracht von Moyland, Keppler, Woermann, Ritter, Darré, Lammers, Stuckart, Meissner, Bohle, Berger, Koerner, Pleiger, Kehrl, Rasche, and Schwerin von Krosigk were charged with having, between March 1938 and May 1945, committed war crimes and crimes against

humanity as defined in Article II of Control Council Law No. 10, in that "they participated in the plunder of public and private property, exploitation, spoliation, and other offenses against property and the civilian economies of countries and territories which came under the belligerent occupation of Germany in the course of its invasions and aggressive wars."

It is asserted that the defendants committed said war crimes and crimes against humanity in that they were principals in, accessories to, ordered and abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with the commission of war crimes and crimes against humanity.

The count then proceeds to allege generally that the countries and territories occupied by Germany were exploited for the German war effort, without consideration of the local economy, with a view of strengthening Germany in waging its aggressive war and to secure the permanent economic domination by Germany of the continent of Europe. It was asserted that the methods employed varied from country to country. In some occupied countries, exploitation was carried out within the framework of the existing economic structure, and pretenses were made to indicate that payment was being made for property thus wrongfully seized.

It is asserted that raw materials, machinery, and other goods sent to Germany from the occupied countries were paid for by the occupied countries themselves, either through the device of excessive occupation costs or by means of forced loans, in return for a credit balance in a "clearing account," which was a nominal account only. It is asserted that in other occupied countries economic exploitation had all of the aspects of deliberate plunder, and that agricultural products and raw materials, which were needed by the German factories, and machine tools, transportation equipment, and other finished products, and foreign securities and holdings of foreign exchange, were sent to Germany.

It is further asserted that in all occupied and incorporated territories, art treasures, furniture, textiles, and other articles were subjected to wholesale plunder in behalf of Germany.

In addition to the foregoing general charges which are directed against all the defendants named in this count, there are further and more specific charges therein directed against each individual defendant. Attention will be called to such specific charges as we hereinafter take up for consideration the case of each individual defendant under this count.

In the course of the trial all the charges of this count, with respect to defendants Steengracht von Moyland, Ritter, and

Meissner, were dismissed upon motion, and the charges therein against defendants Woermann and Bohle were withdrawn by the prosecution.

Before proceeding to a discussion of the evidence, with respect to the defendants who still stand charged in said count, it is desirable to set out herein the pertinent provisions of Article II of Control Council Law No. 10 and the provisions of the Hague Convention of 1907 which place limitations on the conduct of the military occupant with respect to the economy and property in the territory occupied.

Article II [paragraph 1(*b*)], War Crimes, Control Council Law No. 10—

> "Atrocities or offenses against persons or *property* constituting violations of the laws or customs of war, including, but not limited to, murder, ill-treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, *plunder of public or private property,* wanton destruction of cities, towns or villages, or devastation not justified by military necessity." [Emphasis supplied.]

The sections of the Hague Convention of 1907 which are here pertinent are the following:*

> "*Article 46.*—Family honour and rights, the lives of persons, and private property, as well as religious conviction and practice, must be respected.
>
> "Private property cannot be confiscated.
>
> * * * * * * *
>
> "*Article 52.*—Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.
>
> "Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.
>
> "Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.
>
> "*Article 53.*—An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the

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* Annex to Hague Convention No. IV, 18 October 1907, TM 27-251, Treaties Governing Land Warfare (U. S. Government Printing Office, Washington, 1944), pages 31-35.

property of the State, depots of arms, means of transport, stores and supplies, and generally, all movable property belonging to the State which may be used for military operations.

"All appliances, whether on land, at sea, or in the air adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.

* * * * * * *

"*Article 55.*—The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

"*Article 56.*—The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property.

"All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings."

That a program of spoliation, contrary to the laws and customs of war, was carried out by the Reich government in various of the territories occupied by it, there can be no real doubt. In this connection, attention is also called to the findings of the International Military Tribunal, where it was found that territories occupied by Germany[1] "* * * were exploited for the German war effort in the most ruthless way without consideration of the local economy, and in consequence of a deliberate design and policy." In the IMT judgment, it was further found that—[2]

"The methods employed to exploit the resources of the occupied territories to the full varied from country to country. In some of the occupied countries in the East and West, this exploitation was carried out within the framework of the existing economic structure. The local industries were put under German supervision, and the distribution of war materials was rigidly controlled. The industries thought to be of value to the German war effort were compelled to continue, and most of the rest were closed down altogether. Raw materials and the fin-

[1] Trial of the Major War Criminals, op. cit. supra, volume I, page 239.
[2] Ibid.

ished products alike were confiscated for the needs of the German industry. As early as 19 October 1939 the defendant Goering had issued a directive giving detailed instructions for the administration of the occupied territories * * *."

We must analyze the charges and the evidence as they relate to each individual defendant, in order to determine whether such defendants here charged participated in such programs of spoliation so as to be guilty of violating the provisions of the Hague Convention, as hereinbefore set forth. More specifically, we must determine whether they or any of them, participated in the initiation or formulation of such spoliation program, or whether they, or any of them, were vested with responsibility for execution thereof, and in such positions of responsibility, influenced or played a directing role in the carrying out of such criminal program. Before proceeding with such examination and analysis of the charges and evidence, it seems necessary that the Tribunal make some observation, with respect to the application of the provisions of the Hague Convention, and with respect to some of the general defenses interposed by the defendants to the charges in this count.

The evidence adduced with respect to the charges of spoliation as made in this count refers to the occupied territories of Poland, Austria, Russia, Bohemia, Moravia, Sudetenland, Belgium, Holland, Denmark, Norway, and France.

We hold that the charges of spoliation with respect to the Sudetenland are not cognizable by this Tribunal, in that the occupation of the territory by the Reich came as a result of the Munich Pact which did not create a situation of belligerent occupancy subject to the restrictions of the Hague Convention.

We need but briefly discuss the contention that the charges of spoliation with respect to Austria are not cognizable by this Tribunal. The IMT judgment stated:[1]

> "The invasion of Austria was a premeditated aggressive step in furthering the plan to wage aggressive wars against other countries."

It appears, however, that the defense insists that the alleged acts of spoliation in Austria could not have been committed in violation of the Hague Convention, inasmuch as Austria was not at the time of the alleged acts under belligerent occupation by Germany. In this connection it should be noted that, in the Farben Case (Case 6)[2] and in the Krupp Case (Case 10),[3] the Tribunals hearing such cases refused to take cognizance of alleged

[1] Ibid., p. 192.
[2] United States *vs.* Carl Krauch, et al., I. G. Farben Case, Volumes VII and VIII, this series.
[3] United States *vs.* Alfried Krupp, et al., Krupp Case, Volume IX, this series.

acts of spoliation charged to have been committed in Austria. In the first-mentioned of such cases, the Tribunal, in an order made by it, expressed a view in harmony with the contentions now advanced by the defense in this case. In the instant case, it is not, however, necessary to decision that this Tribunal express itself either in accord with or in opposition to the position taken in this matter by the Farben or the Krupp Tribunals, inasmuch as the evidence introduced in this case, with respect to the charges of spoliation in Austria, would completely fail to establish such charges, even though we were to find that, contrary to the contention of defendants, Austria, during the time in question, was under military occupation by Germany.

The evidence with respect to spoliation in Austria, therefore, in no way has herein contributed to any findings of guilt hereinafter made against any defendant in this count.

The further contention that certain occupied territories were "incorporated" by Germany, following its occupation of such territories, making inapplicable the rules of warfare to such occupied and subsequently incorporated territories is, in our view, untenable. Similar contentions have been submitted in the trials before other Nuernberg Tribunals, with respect to some of the same territories involved in this case. In this connection, we wish to make reference to the statement of the IMT when such defense was interposed before that Tribunal with respect to Bohemia and Moravia. It stated:[1]

> "The doctrine was never considered to be applicable so long as there was an army in the field attempting to restore the occupied countries to their true owners, and in this case, therefore, the doctrine would not apply to any territories occupied after 1 September 1939. As to war crimes committed in Bohemia and Moravia, it is sufficient answer that these territories were never added to the Reich, but a mere Protectorate was established over them."

It should be noted that, notwithstanding such contention by the defendants in the IMT case, the Tribunal there found that war crimes had been committed in Alsace-Lorraine, France, in Yugoslavia, in a portion of Poland allegedly incorporated, and in the Protectorate of Bohemia and Moravia. Moreover, other military tribunals have subsequently refused to accept the defense of "incorporation" as justification for acts of spoliation. In the Flick Case (Case 5)[2], charges of spoliation were found to have been committed in Lorraine. In the Farben Case (Case 6), the

[1] Trial of Major War Criminals, op. cit., volume I, page 254.
[2] United States *vs.* Friedrich Flick, et al., Volume VI, this series.

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Tribunal there stated, with respect to this defense, as follows (Farben tr. p. 15723)[1]:

> "The IMT in its judgment found it unnecessary to decide whether, as a matter of law, the doctrine of 'subjugation' by military conquest has application to subjugation resulting from the crime of aggressive war. The doctrine was held to be inapplicable where there are armies in the field still seeking to restore their occupied country to its rightful owners. The Hague Regulations do not become inapplicable because the German Reich 'annexed' or 'incorporated' parts of the occupied territory into Germany * * *."

Within the holding of the IMT, which we follow, there were armies in—

> "* * * the field attempting to restore the occupied countries to their true owners. We adopt this view. It will, therefore, become unnecessary, in considering alleged acts in Poland and Alsace-Lorraine, to consider this distinction which has been urged by the defense."

And in the Krupp Case (Case 10)[2], Tribunal III disposed of this defense with respect to French territory allegedly incorporated into the Reich as follows (*Krupp tr. p. 13273*):

> "This confiscation was based on the assumption of the incorporation of Alsace into the Reich and that property in Alsace owned by Frenchmen living outside of Alsace could be treated in such manner as to totally disregard the obligations owed by a belligerent occupant. This attempted incorporation of Alsace into the German Reich was a nullity under international law and consequently this interference with the rights of private property was a violation of Article 46 of the Hague Regulations."

This Tribunal, as was done in the IMT Case, the Farben, Krupp, and Flick Cases, rejects the defense of incorporation as advanced in justification of spoliation.

The claim made in the course of argument that the Justice Case (Case 3) made a ruling to the effect that Bohemia and Moravia were legally incorporated into Germany is not a justified claim in the light of a full and careful analysis of the entire context of the judgment in said case.

The efforts here made to justify certain acts of spoliation, on the ground that they were made pursuant to agreement with or following the consent of governments established in the terri-

[1] United States *vs.* Carl Krauch, et al., Volume VIII, this series.
[2] United States *vs.* Alfried Krupp, et al., Volume IX, this series.

tories occupied by Germany are, in our opinion, untenable. We make particular reference to the Vichy government in France. In the Farben Case (Case 6) the Tribunal there refused to accept as a defense the fact that a certain agreement, apparently legal in form, had been entered into between the Vichy government and a representative of the Farben interests, and under which certain charges, acts of spoliation, allegedly had been committed. The Court stated (*Tr. p. 15744*):

> "The essence of the offense is the use of power resulting from the military occupation of France as a means of acquiring private property in utter disregard of the rights and wishes of the owner. We find the element of compulsion and coercion present in an aggravated degree in the Francolor transaction and a violation of the Hague Regulations is clearly established."

In the Krupp Case (Case 10) (*Krupp Tr. p. 13325*), Tribunal III stated in disposing of a similar contention in connection with an alleged agreement between the Vichy government and the Reich for the use of French prisoners of war in the armament industry:

> "Moreover, if there was any such agreement it was void under the law of nations. There was no treaty of peace between Germany and France but only an armistice, the validity of which for present purposes only may be assumed. It did not put an end to the war between those two countries but was only intended to suspend hostilities between them. This was not fully accomplished. In France's oversea possessions and on Allied soil French armed forces, fighting under the command of the Free French authorities, waged war against Germany. In occupied France more and more Frenchmen actively resisted the invader and the overwhelming majority of the population was in full sympathy with Germany's opponents. Under such circumstances we have no hesitancy in reaching the conclusion that if Laval or the Vichy Ambassador to Berlin made any agreement such as they claimed with respect to the use of French prisoners of war in German armament production it was manifestly *contra bonos mores,* and hence void."

It is significant that in this case credible testimony (witness Hemmen) was introduced to the effect that in connection with promulgation of French regulations and laws for unoccupied France, which ostensibly was under the Vichy government, consent was necessary from the Reich authorities as a prerequisite to the establishment of such decrees and regulations in unoccupied

France. This might well justify a holding like that in Case 2 (Milch Case), which stated:[1]

> "This contention entirely overlooks the fact that the Vichy government was a mere puppet set-up under German domination which, in full collaboration with Germany, took its orders from Berlin."

And finally in this connection, we call attention to the judgment rendered 30 June 1948 in the case of Hermann Roechling and others, tried in Rastatt in the French Zone of Occupation, by an international court under Control Council Law No. 10[2]:

> "* * * the defendant asserts that he had thus secured the agreement of a government which he considered as the legal government of France; that he, however, could not fail to know that this government, whether legal or not, applied the German policy in France in a servile manner and committed treason against its country in dancing to the tune of the enemy."

It is, of course, a matter of common knowledge that the leading representatives of said Vichy government were, subsequent to the cessation of hostilities, hanged or imprisoned by the French people as traitors.

It has been earnestly contended by the defense that the rules of belligerent occupation in fact have been greatly relaxed and that the defendants could not properly be convicted on the basis of the law in force at the time of the alleged misdeeds. We have considered this defense and the arguments urged in support thereof. We find no adequate justification for the position thus taken. We are in complete agreement with the statement of Tribunal VI in the Farben Case (Case 6), relative to this defense, and wherein they cite an eminent authority in international law, Lauterpacht. The statement follows (*Farben tr. pp. 15724–15725*):

> "It is further said that the Hague Regulations are outmoded by the concept of total warfare; that liberal application of the laws and customs of war as codified in the Hague Regulations is no longer possible; that the necessities of economic warfare qualify and extinguish the old rules and must be held to justify the acts charged in keeping with the new concept of total warfare. These contentions are unsound. It is obvious that acceptance of these arguments would set at naught any rule of international law and would place it within the power of each nation to be the exclusive judge of the applicability of international

[1] United States *vs.* Erhard Milch, Volume II, this series, page 788.

[2] The indictment, judgment, and judgment on appeal in the Roechling Case are reproduced as appendix B in this volume.

law. It is beyond the authority of any nation to authorize its citizens to commit acts in contravention of international penal law. As custom is a source of international law, customs and practices may change and find such general acceptance in the community of civilized nations as to alter the substantive content of certain of its principles. But we are unable to find that there has been a change in the basic concept of respect for property rights during belligerent occupation of a character to give any legal protection to the widespread acts of plunder and spoliation committed by Nazi Germany during the course of World War II. It must be admitted that there exist many areas of grave uncertainty concerning the laws and customs of war, but these uncertainties have little application to the basic principles relating to the law of belligerent occupation set forth in the Hague Regulations. Technical advancement in the weapons and tactics used in the actual waging of war may have made obsolete in some respects, or may have rendered inapplicable some of the provisions of the Hague Regulations having to do with the actual conduct of hostilities and what is considered legitimate warfare. But these uncertainties relate principally to military and naval operations proper and the manner in which they shall be conducted. We cannot read obliterating uncertainty into those provisions and phases of international law having to do with the conduct of the military occupant toward inhabitants of occupied territory in time of war, regardless of how difficult may be the legal questions of interpretation and application to particular facts. That grave uncertainties may exist as to the status of the law dealing with such problems as bombings and reprisals and the like, does not lead to the conclusion that provisions of the Hague Regulations, protecting rights of public and private property, may be ignored. As a leading authority on international law has put it:

" 'Moreover, it does not appear that the difficulties arising out of any uncertainty as to the existing law have a direct bearing upon those violations of the rules of war which have provided the impetus for the almost universal insistence on the punishment of war crimes. Acts with regard to which prosecution of individuals for war crimes may appear improper owing to the disputed nature of the rules in question arise largely in connection with military, naval, and air operations proper. No such reasonable degree of uncertainty exists as a rule in the matter of misdeeds committed in the course of military occupation of enemy territory. Here the unchallenged authority of a ruthless invader offers opportunities for crimes the hein-

ousness of which is not attenuated by any possible appeal to military necessity, to the uncertainty of the law, or to the operation of reprisals.' "

We have also given attention to the defense of *tu quoque,* here presented, the gist of which is that the postwar occupation of Germany by the Allies has resulted in actions which violate the Hague Convention with respect to military occupation. This contention requires very little discussion. The contention that the traditional American view of the law of belligerent occupation permits any kind of conduct in the occupied territories is not in fact true. One basic error of the position taken in this respect lies in the failure to recognize that there is a great difference between the rights and powers of the Allied governments in the Reich today, and the rights and powers of the Reich in the territories that it belligerently occupied, following its invasions and through the war years. The Allied occupation of Germany following her unconditional surrender and the disbanding of her armies, and the subsequent Allied exaction of reparations to restore and rehabilitate in a measure the territories devastated and despoiled by Germany do not make a situation falling within the contemplation of the provisions of the Hague Convention applicable to belligerent occupancy. The judgment in the Justice Case, Case 3,* in the course of discussing this matter, points out—

"* * * that the four powers are not now in belligerent occupation or subject to the limitations set forth in the rules of warfare. Rather, they have justly and legally assumed the broader task in Germany which they have solemnly defined and declared * * *."

We find, therefore, no justification for the contention that the law of belligerent occupation has changed since 1945, or that the policy of the Allied governments during the postwar occupation of Germany contravenes the Hague Convention so as to make applicable the defense of *tu quoque,* here sought to be interposed.

We do not deem that the other general defenses interposed require or justify a discussion by the Tribunal.

We will not proceed to a consideration of the charges and the evidence relating to each individual defendant charged under this count.

VON WEIZSAECKER

In addition to the general charges hereinbefore set forth, and which apply to all the defendants, it was further specifically

* United States *vs.* Josef Altstoetter, et al., Volume III, this series.

charged that defendant von Weizsaecker, as State Secretary of the German Foreign Office, received reports from the representatives of the German Foreign Office concerning the planning and execution of the plans and policies for the economic exploitation of various occupied countries, particularly in occupied territories in the West, which programs it is alleged included exactions of excessive occupation indemnities, establishment of the so-called "clearing accounts," and the transfer to German ownership of industrial participations and foreign investments, by means of compulsory sales. It is further specifically charged that defendant von Weizsaecker, in his position in the German Foreign Office, received and acted upon reports relative to seizures and looting of cultural and art treasures, and that spoliation activities in the Soviet Union were carried out in part by a special battalion, which had been sent to the East by the German Foreign Office to seize and send to Germany objects of cultural and historical value.

In support of the charges of this count, the prosecution called as a witness one Hans Richard Hemmen, who had been a member of the Foreign Office from 1938 to 1944. It appears that in July 1940 while he was Chief of the Economic Department of the German Legation at Berne, he was appointed Chief of the Foreign Armistice Delegation for Economy. In that capacity, it appears that he played a leading role with respect to Germany's exploitation of the economy of the occupied territories, particularly in the West.

The testimony of such prosecution witness, as it relates to the spoliation program of the Reich in the western territories and the administration of such program, must be accorded serious consideration. Among other things, Hemmen testified that, when appointed as Chief of the Foreign Armistice Delegation for Economy, he was informed by Foreign Minister von Ribbentrop to go to Wiesbaden and take charge of negotiations there with the French delegation, which had asked for a reopening of economic relations between Germany and France. It is significant that at this time Hemmen was instructed to report to the Foreign Office and, more specifically, he was told to report to the Foreign Minister von Ribbentrop. Hemmen's testimony with respect thereto is as follows (*Tr. p. 3944*):

> "The Minister emphasized that it was my duty to take orders and to report exclusively to the Foreign Office, that is, to the Minister himself or his representative, and to take orders from nobody else. In addition he made me personally responsible that none of the members of my delegation, who belonged to the various economic and financial ministries, should report to their own ministry or accept orders from their ministry."

The foregoing would indicate a determination on the part of von Ribbentrop that, in matters of policy or administration relative to the spoliation program, authority and power of decision should be held within a very small circle, very near the official top level. It is significant that Hemmen also testified as follows, in connection with the handling of the economic and financial questions in the occupied territories (*Tr. p. 4160*):

> "Goering was decisive in all economic and financial questions in the occupied zone; and Ribbentrop's influence, as against Goering and the OKW, was, I am afraid, not very great."

It appears that another Reich agency that played an important role in Germany's exploitation of occupied territories was the Handelspolitischer Ausschuss, frequently referred to as the HPA, in which the Reich Ministers of the Economic and Financial Ministries were represented. This organization actually dates from a period prior to the beginning of the Nazi regime, but it continued as an organization to function through the Nazi period. Represented in the HPA were: OKW, Four Year Plan, Reich Finance Ministry, Minister of Economics, Minister of Agriculture, and the Reich Bank and, when occasion required it, other Ministers, like the Minister of Transport or the Minister of Munitions, were called in. The HPA handled all economic and financial questions between Germany and foreign countries; also the economic and financial questions between the German Government and the Vichy government after the German-French armistice agreement. The director of the economic department of the Foreign Office, a Mr. Wiehl, was chairman of the HPA during the times here under consideration.

It appears from the testimony of Hemmen, which is borne out by recitals in the documentary exhibits introduced in connection with this count by the prosecution, that whenever there were matters requiring a report to superiors, Hemmen transmitted such matters to the Reich Minister for Foreign Affairs, von Ribbentrop, such documents sometimes containing a recital to the effect that they were for the Minister of Foreign Affairs and were routed via the State Secretary. This apparently was fixed routine, according to this prosecution witness.

Practically all the documentary evidence introduced by the prosecution in support of the allegations against von Weizsaecker under this count originated either with the Foreign Armistice Delegation for Economy, headed by Hemmen, or in the HPA, which was headed by Wiehl. A considerable number of such documentary exhibits were introduced by the prosecution to substantiate the charges of this count. Over thirty such exhibits

were introduced and referred to by the prosecution as applicable to the case of defendant von Weizsaecker under this count. Such documents, for the most part, consist of reports and memorandums by either Hemmen, as head of the Foreign Armistice Delegation for Economy, or from Wiehl, as head of the HPA. They were transmitted usually to von Ribbentrop, such transmission, as hereinbefore indicated, sometimes being via the State Secretary's office. The prosecution has called attention to the fact that, although von Weizsaecker is not the person to whom any of these documents were in fact directed, his name appears on the distribution list on some of such documents. This fact alone, however is not of decisive significance in determining the responsibility of the defendant with respect to the formulation or the carrying out or furtherance of said spoliation program. It was established by competent evidence during the course of this trial, that the mere appearance of an official's name on a distribution list attached to an official document might mean only that it was intended that such official should be advised of the matter involved. It cannot of itself be taken to mean that those whose names appear on such distribution lists have responsibility for, or power and right of decision with respect to the subject matter of such document.

The documents in question, for the most part, dealt with the occupation costs in France, the seizure of art treasures, and the acquisition of securities and gold from western occupied territories. In not a single one of such documents, however, does it appear that defendant von Weizsaecker bore responsibility for the spoliation program in the West, or took such part in the administration thereof as to make him criminally liable. Only two affirmative acts of von Weizsaecker revealed by any of the documents thus introduced, and which in any way touch the spoliation program, are found, the first being in the form of a memorandum dated 21 July 1940 sent to von Weizsaecker by German Legation Secretary, Major von Kuensberg, which memorandum is entitled, "Safeguarding Art Treasures in France." Such memorandum called von Weizsaecker's attention to the fact that Foreign Minister von Ribbentrop had ordered the Reich Plenipotentiary Abetz "to have all art treasures in the occupied French territory, belonging to the State and to Jews, safeguarded." The memorandum indicated that, inasmuch as this was a large assignment, it was highly desirable to have military cooperation, but that it was difficult to secure cooperation from the military, as the military apparently desired to carry out the safeguarding program themselves. The memorandum then states that the Reich Foreign Minister requests that the State Secretary see to it that any mis-

understanding which might exist on the part of the military commander, be removed. It appears that in response to such request, von Weizsaecker under date of 22 July 1940 prepared a memorandum stating that he had talked to Field Marshal Keitel about the Fuehrer order, transmitted to Ambassador Abetz by the Reich Foreign Minister, concerning the making secure of the entire public and Jewish art treasures in the occupied territories of France, and that Keitel had indicated that he had, at an earlier date, instructed the Military Governor of Paris "to safeguard these art treasures from being carried off illegally." Von Weizsaecker's memorandum concludes by saying that Keitel had given assurance that he would instruct the Military Governor of Paris to give the necessary assistance to Abetz to carry out the assignment given him, with respect to such art treasure.

The second instance of affirmative action by von Weizsaecker is found in his preparation of a document relating to the matter of a report received from Abetz' deputy in France for the Foreign Office, and of which von Weizsaecker apparently received a copy. Such report reveals seizure of Jewish art treasures in France, and their storage in a building near the Embassy there. Such report was dated 31 July 1942. It appears that on 10 August 1942 von Weizsaecker directed a letter to the Personnel Division and the Division Germany making inquiry as to whether they had examined the legal aspects of the seizure of such art treasures. He made reference to the report of 31 July 1942 received from the deputy of Abetz. Von Weizsaecker asked that the matter be resubmitted to him in a month. No evidence was introduced to indicate the results of such inquiry.

Neither of the above two instances indicate such participation by von Weizsaecker in the spoliation program of the German Reich in the occupied territories in the West as to render him guilty under this count.

A few documents were introduced, dealing with seizure of art treasures in Russia. That need not be discussed here, insofar as the charges against von Weizsaecker are concerned, as they do not involve him in the events alluded to in such documents.

On the evidence presented, in connection with the charges in this count against defendant von Weizsaecker, we must and do find the defendant not guilty.

KEPPLER

In addition to the general charges made against all the defendants in this count, defendant Keppler is also specifically charged with having been a leading figure in the Continental Oil Com-

pany, A.G., which was designated to exploit the oil resources of the Soviet Union and other territory which fell into German hands, and it is asserted that he also participated in the exploitation of Poland through his position and activity in the various spoliation agencies, including Deutsche Umsiedlungs-Treuhandgesellschaft, known as the DUT.

The evidence with respect to this count, and the findings of the IMT, amply establish that two organizations or agencies were active in exploitation and spoliation of the occupied territories, and especially the occupied eastern territories. One such organization was the Continental Oil Company, which had been assigned the particular task to exploit oil resources, and the Deutsche Umsiedlungs-Treuhandgesellschaft, known as the DUT, an organization actively connected with the resettlement program, part of which involved a ruthless spoliation of the economy of some of the occupied territories.

The prosecution places particular stress upon the fact that defendant Keppler was made a deputy chairman of the Aufsichtsrat of the Continental Oil Company. This appears to have been in January 1942. It further appears, however, that in March 1943, Keppler ceased to hold this position with the Continental Oil Company. It appears that the meetings of the Aufsichtsrat were not held more than twice a year. It further appears that it was the duty of the deputy chairman to act in the absence of the chairman. There is evidence to the effect that such organization met only twice each year.

There is considerable testimony in the record indicating that Keppler was active in research and development of oil resources and supplies for the Reich at an early date, going as far back as 1933 and during succeeding years. Much of such evidence, however, relates to a period long before the time covered by the charges in this count. From the evidence, we cannot draw the conclusion that he participated or directed the Continental Oil Company in its spoliation activities or programs. The Tribunal is of the opinion that no showing has been made of such activity or participation on the part of Keppler in the Continental Oil Company as to justify a finding that he is guilty of spoliation, by reason of his affiliation and work in said company.

The prosecution quite correctly insists that Keppler's activities and participation in the operations and programs of the DUT were such as to render him criminally liable therefor. The evidence amply shows the ruthless policy and practices of the DUT, with respect to spoliation incident to resettlement.

The scope and activities of the DUT have been treated at some length in the discussion of count five and will be but briefly

treated here. The defendant Keppler, in the course of his examination before the Tribunal, admitted that it was on his suggestion that the DUT was organized, that he first suggested it to Himmler, who requested that Keppler take the matter up with the Finance Minister, who approved of the proposition. This was then reported to Himmler, with the result that the organization was created and that Keppler became chairman of the Aufsichtsrat of the organization. It further appears that the defendant Keppler, under date of 3 November 1939, directed a letter to Himmler, (*NO–2407, Pros. Ex. 1369*), with a list of prospective members for the Aufsichtsrat of the DUT. Under date of 7 November 1939 it appears that Himmler sent a letter to Keppler, advising that he was "fully in agreement" with Keppler's proposed list of members for the Aufsichtsrat of the DUT. It may be noted in passing that defendant Hans Kehrl was one of the names proposed by Keppler for the said board and approved by Himmler.

It appears from the evidence also that, in the summer of 1940, a working committee was appointed by the Aufsichtsrat. Its members were defendant Keppler and three others, among them the defendant Kehrl. Defendant Keppler, on the stand, insisted that the DUT was only concerned with the "matter of property compensation, because the DUT itself was never concerned with evacuation."

One Metzger who had been the head of the legal division of the branch office of the DUT in Luxembourg in 1943 and 1944, and who had an office in Alsace in 1944, described to the Tribunal how the DUT actually handled the property of Alsatian deportees. He stated that the DUT "had to administer the property of the deportees." He indicated that the deportees before departure were obliged to list their property with the DUT, and to appoint "authorized agents who had the authority to receive the movable property, especially the furniture." He stated that, in most cases, the furniture was stored in Luxembourg, either by authorized agents or by acquaintances.

He then stated (*Tr. p. 2996*):

> "For the rest, the property was administered by DUT in such a way that wherever possible resettlers, that is, people who came from the South Tyrol or Rumania, but especially the South Tyrol, to work, were put in industry or agriculture. Their assignment to industry was carried out by the industrial department of the DUT.
>
> "For the rest, the property was controlled by the DUT." * * *

In response to a question as to whether the evacuees, that is,

the deportees, ever received their business properties or real estate, the defendant answered that furniture was handed over to authorized agents who would dispose of it in accordance with the authority given them by the evacuees. He stated also that small sums of money, perhaps "between 2 or 3 hundred marks" were sent to the evacuees monthly, pursuant to their application, if they desired, "but the remainder of the property remained blocked." This witness also testified that he had actually seen deportations, and the evacuees being questioned by DUT employees. He also testified with respect to the so-called evacuees that "there is no doubt that they did not go voluntarily."

The defendant Keppler indicated on the stand that he could not remember whether he was concerned with the matters referred to by Metzger, stating, "I cannot remember for certain, but I imagine not, in view of the unimportance of the subject."

In view of the evidence which indicates the great scope of the resettlement program, with the resulting innumerable confiscations of the type referred to, in Poland, in eastern as well as western occupied territories, it is inconceivable that a man in Keppler's position, as head of the Aufsichtsrat, to which office he admitted he gave considerable attention, would not have found this part of the activities of the DUT a considerable part of their business, so as to make one in Keppler's position thoroughly conversant with its true nature and ramifications. There is other evidence in the record corroborative of that, hereinbefore referred to.

The seizures and the subsequent administration by the DUT of the evacuees' property, in the manner described by the former DUT official, Metzger, was clearly such an activity in implementation of the confiscatory and otherwise illegal program of such resettlement project as to fall within the prohibitions of Article 46 of the Hague Convention with respect to belligerently occupied territories. Keppler's participation therein and responsibility therefor render him guilty under count six.

DARRÉ

In addition to the general charges made against defendant Darré in the indictment hereinbefore set forth, it is specifically alleged against him that as the Reich Minister of Food and Agriculture he had an active representative from such Ministry in the office of the Four Year Plan in connection with the setting up of foodstuff quotas for occupied areas. It is alleged that orders for fulfillment of these quotas were transmitted by the Ministry of Food and Agriculture to competent officials in the occupied areas

with the various agencies directed by the defendant Darré participating in the acquisition of such agricultural products and in their storage and distribution within Germany.

The prosecution has called attention to, and the Tribunal has taken judicial notice of various excerpts from the findings in the judgment of the International Military Tribunal. Among such excerpts the following are particularly pertinent*:

"In many of the occupied countries of the East and West, the authorities maintained the pretense of paying for all the property which they seized. This elaborate pretense of payment merely disguised the fact that the goods sent to Germany from these occupied countries were paid for by the occupied countries themselves, either by the device of excessive occupation costs, or by forced loans in return for a credit balance on a 'clearing account' which was an account merely in name.

"In most of the occupied countries of the East, even this pretense of legality was not maintained; economic exploitation became deliberate plunder. This policy was first put into effect in the administration of the Government General in Poland. The main exploitation of the raw materials in the East was centered on agricultural products, and very large amounts of food were shipped from the Government General to Germany.

"The evidence of the widespread starvation among the Polish people in the Government General indicates the ruthlessness and severity with which the policy of exploitation was carried out.

* * * * * * *

"The economic demands made on the General Government were far in excess of the needs of the army of occupation and were out of all proportion to the resources of the country. The food raised in Poland was shipped to Germany on such a wide scale that the rations of the population of the occupied territories were reduced to the starvation level, and epidemics were widespread. Some steps were taken to provide for the feeding of the agricultural workers who were used to raise the crops, but the requirements of the rest of the population were disregarded."

The prosecution, in connection with the charges against defendant Darré under this count, in their case in chief relied largely upon two documentary exhibits and two witnesses. Such testimony was directed toward proving that defendant Darré in his capacity as Reich Minister of Food and Agriculture actively par-

* Trial of the Major War Criminals, op. cit., volume I, pages 240–241, 297.

ticipated in the formulation and carrying out of the Reich program of spoliation and plunder with respect to food and agricultural products in the occupied territories. The findings of the IMT seem to establish conclusively the fact that there was being carried out from the time of their occupation until the end of the war, a program of ruthless spoliation and plunder of food and agricultural products in the occupied territories, particularly in the occupied eastern territories. From the direct evidence presented it appears that from 1939 to 1942, inclusive, which was during Darré's term of office as Reich Minister of Food and Agriculture, a considerable amount of food and agricultural products was brought from occupied territories to the Reich, despite the fact that the inhabitants of those occupied territories were starving. The effort of the defense to minimize the extent of this exploitation by indicating that the program inaugurated by the German Reich in the occupied territories was in fact beneficial to the inhabitants thereof, we regard as entirely untenable. With respect to the authority and responsibility of the defendant Darré in these transactions we find adequate and convincing proof in the testimony of the witnesses called by the prosecution in connection with this matter.

Kurt Dietrich, former Ministerialrat in the Reich Ministry of Food and Agriculture, Division II, which department bore considerable responsibility for the procurement of foodstuffs for the people, testified before the Tribunal on 25 March 1948, and his testimony in the opinion of the Tribunal is entitled to considerable weight. Upon being asked as to the role played by such Division II in the establishment of foodstuff quotas to be imported from the occupied countries of France, Holland, Belgium, Poland, and Russia during the years 1939 to 1942, the period which is covered by Darré's term in office as Reich Minister of Food and Agriculture, the witness stated that the Ministry of Food and Agriculture in general did not participate in the administration of the occupied territories. He stated, however, that the food division in the Four Year Plan, which division was also under State Secretary Backe of the Ministry of Food and Agriculture, submitted to the Ministry of Food and Agriculture "various reports about the situation in nourishment in the occupied territories," and that the Ministry of Food and Agriculture was then ordered to prepare a plan for the feeding of Germany and the occupied territories. The witness stated (*Tr. p. 4622*) :

> "In this connection so-called food surveys were planned, and these graphs would show the additional quantities which were needed to fill the lacks in the home territory and in the occupied countries."

He stated that the final decision as to what "surpluses" from the occupied territories would be sent to the Reich proper was made by the Four Year Plan. In the course of his examination the witness was asked the question (*Tr. p. 4268*):

> "Did the Division II, after a study of the food available in the occupied countries and after consideration of the need for foodstuffs within the Reich, determine upon the amount of foodstuffs that they would import or that they recommended to be imported to the Reich?

To this the witness answered:

> "Division II only made the corresponding recommendations as to which foodstuffs were to be imported so that the German people could be fed."

Upon being asked whether these imported foods, upon reaching the Reich, would go to the Reich Ministry (Food and Agriculture) the witness stated:

> "The Ministry disposed of these foodstuffs with the help of the various Reich agency offices."

It may be of some significance that while the persons who were in charge of the agricultural departments in the occupied areas were, as such, subordinate to the military commander or commissioner therein, they had generally been recruited from the Reich Food Estate and were former members thereof. It is to be observed that the Reich Food Estate was under the control and domination of the Reich Ministry of Food and Agriculture.

The witness Dietrich further testified that in all matters pertaining to the Reich Ministry of Food and Agriculture and the Reich Food Estate "it was the Minister who was the responsible man."

Another prosecution witness in this connection was one Walter Pflaumbaum, who formerly held a position within the Reich Ministry of Food and Agriculture as head of the division for livestock raising and animal products. He stated that it was the duty of such department "to take over surplus animal products in the Reich, to stock them up, and to distribute in case of want and also to see to it that the imports of meat and animal products from abroad to the Reich were carried out." He further stated (*Tr. p. 4273*):

> "The amounts of livestock and meat that were to be imported were told us by the Reich Ministry for Food and Agriculture. The technical carrying out of the taking over of these products formed the competency of the Reich offices."

We further quote the following from his examination before the Tribunal (*Tr. p. 4274*) :

"Q. Now, in the Reich office, you were directly subordinate to the Reich Minister?

"A. The Reichstelle was subordinate to the Ministry for Food and Agriculture and received its directives from there.

"Q. You had direct contact with Division II of the Reich Ministry of Food and Agriculture?

"A. Yes, the directives in general came from the Referente who were competent for livestock and meat economy in the Ministry.

"Q. As to the distribution of the foodstuffs within the Reich, you followed the orders of the Reich Ministry?

"A. The directives came from the Reich Food Estate which since the beginning of the war was subordinate to the Reich Ministry."

Further evidence of the fact that Darré substantially contributed to the formulation and implementation of the Reich's program of spoliation in the occupied territories appears from the fact that on 10 January 1940 he, as the Reich Minister of Food and Agriculture, signed and issued a decree effective as of 1 January 1940, making applicable in the so-called "Incorporated" Eastern Territories the Reich Food Estate Law, which law dated from September 1933 and gave to the Reich Minister of Food and Agriculture extensive powers to settle a wide range of agricultural questions, including matters relating to production, sale and prices of agricultural products, and power to issue implementing decrees. It is obvious that such a measure was made applicable to further subject the designated occupied territories to the requirements and demands of the German economy in utter disregard of the provisions of Article 52 of the Hague Convention as hereinbefore set forth. Also violative of the provisions of said Article 52 would be the importations of foodstuffs from the occupied territories as hereinbefore alluded to, irrespective of whether or not they had been subjected to the so-called Reich Food Estate Law.

From the testimony adduced with respect to the charges against defendant Darré in count six, we must and do find defendant Darré guilty thereunder.

LAMMERS

We come now to a consideration of the part that defendant Lammers as Reich Minister and Chief of the Reich Chancellery is alleged to have taken in said program of plunder and spoliation.

In addition to the general charges made against him and other defendants, it is specifically asserted in this count that he participated in, and formulated and signed various decrees authorizing confiscations of property in the occupied countries, and that he attended meetings at which occupational policies were discussed and formulated and received reports relating to the execution of such policies and participated in a wide variety of ways in the furtherance of such policies.

The prosecution introduced considerable evidence to show the defendant held high and strategic positions in the Third Reich during the times covered by the charges in this count, and that in such positions he exercised his powers in the formulation, implementation, and furtherance of the spoliation program in the occupied territories.

The defendant, a man of capacity, learned in the law and possessed of wide experience in governmental and legal spheres, testified at great length, and sweepingly denied that the positions held by him in the Third Reich actually vested him with any real power and authority with respect to the matters concerning which he is charged in this count. He denied any guilty knowledge or intent in the numerous activities attributed to him in the charges and evidence. Before proceeding to a general consideration of the evidence introduced with respect to the charges made against the defendant in this and the succeeding count it seems desirable to first briefly examine the position of importance held by him in the Third Reich as involved in many of the incidents which are the basis of the charges against defendant in this count. It may be noted that in the treatment of preceding counts reference has been made to the defendant's position of responsibility and authority in the Reich government during the times covered by the charges, and to the scope of his activities in such position during such period. While we do not wish to unnecessarily repeat what heretofore may have been touched upon, we deem it essential to a proper appraisal of much of the evidence in this and the next succeeding count that defendant's qualification, and his position and activities in the government of the Third Reich during the period in question should be further elaborated upon and emphasized.

The most prominent position held by the defendant was that of Chief of the Reich Chancellery. It convincingly appears that the authority and functions of the Reich Chancellery reached into practically all fields of governmental business or activity and that it maintained contacts with the principal departments of the civil government. Evidence introduced with respect to the authority

and functions of the Reich Chancellery was contained in an official publication of the Reich of 1935 which states:

"The Reich Chancellery established the contact between the Fuehrer, the Reich ministries, and various other agencies. The State Secretary and Chief of the Reich Chancellery keeps the Fuehrer and Reich Chancellor informed about the current questions of general policy and prepares the decisions to be taken."

And further:

"The Reich Chancellery also conducts the current business of the Reich government and attends to the preparation of questions of protocol of the ministers' conferences and cabinet meetings."

Further evidence introduced on this question also indicates that the office of the Reich Chancellery was in fact a "key" position in the Reich government. In the course of the trial Otto Meissner, one of the defendants in the case, in the course of an examination by the counsel of defendant Lammers, in discussing the office of the Reich Chancellery, stated in part:

"The center of gravity, the main part of political influence and work, lay with the Reich Chancellery."

In the course of the same examination the witness Meissner stated further:

"The actual sphere of activity of the Reich Chancellery was the preparation of decisions of the Reich government—legislation, etc."

Dr. Meissner also indicated that Dr. Lammers, in his position as Chief of the Reich Chancellery, sometimes acted under special assignments from Hitler.

Despite the general tenor of the defendant's own testimony, which was to the effect that in his position he did little more than act as a conduit, with no authority to initiate or to formulate policy or make decisions, he did make some rather significant admissions with respect to his duties and activities. He was asked the following question by his own counsel (*Tr. p. 20224*):

"Q. To make it quite clear, what responsibility did you have in the case of Fuehrer decrees, first, before you cosigned them, and second, after you had been authorized to cosign them?"

The pertinent part of the defendant's answer to such question was as follows:

"A. * * * . *I was responsible for seeing to it that the Fuehrer's wishes were properly and suitably formulated,* and secondly, I had to see to it that as far as the contents of the law went, the ministers concerned had been heard." [Emphasis supplied.]

Defense counsel asked him the following question (*Tr. p. 20227*):

"Q. But surely you had a certain influence on factual contents of the Fuehrer decrees and Fuehrer ordinances, or was that not the case?"

To this question the defendant made the following answer:

"A. * * *. As far as the legal formulation of the Fuehrer's desire went and the number of the formal regulations, there, *of course, I had a certain influence.*" [Emphasis supplied.]

Again defendant's counsel asked defendant the following question (*Tr. p. 20241*):

"Q. Mr. Witness, the prosecution in the indictment charged that you had exercised a coordinating function at the top authority and embracing nearly all spheres. Now, how about it?"

The pertinent part of the defendant's answer to such question was as follows:

"A. In the majority of the cases enumerated by the prosecution I either did not exercise any coordinating function at all, at any rate not to the extent asserted, and partly I had not been concerned at all with the laws or ordinances concerned, nor did I cosign them. I did not participate at all in a large part of the measures adduced by the prosecution. I didn't know the programs that have been mentioned and did not take part in their formulation. I did not receive the reports submitted. All this will only be clarified by the evidence. *As far as I did exercise a coordinating function it was confined in the case of laws and ordinances to matters of form.*" [Emphasis supplied.]

Then apparently for the purposes of illustrating such "matters of form" the defense counsel propounded the following question to the defendant (*Tr. p. 20242*):

"Q. Mr. Witness, I will single out a few instances from the wealth of charges made against you in the indictment. We will get into the details later in discussing the documents. For instance, you are made responsible for the appointment of Gauleiter Sauckel as Plenipotentiary General for the direction of labor. Now, what can you tell us about it in a few brief sentences?"

The defendant's answer is so revealing that although rather lengthy it is quoted here in full as follows:

"A. In fact, this is a typical case, to wit, that of the Fuehrer decree dated 21 March 1942 on the Plenipotentiary General for the direction of labor. When the Fuehrer decided to appoint such a Plenipotentiary General for the direction of labor in the person of Gauleiter Sauckel, then it was the Fuehrer who alone, by virtue of his prerogatives as head of the State, could settle the organizational rights. He alone could lay down, could order that such a Plenipotentiary General was instituted at all and it was only he who could order as to who should be this Plenipotentiary General and to whom he was to be subordinate and what authorities were to be delegated to the Plenipotentiary General in his relation with the Reich Ministers and how in particular his relations should be to the Minister of Labor who had so far settled labor allocation. This was departmental coordination which was necessitated by the case in which I, however, was merely charged with formulating, that is, the task which the Fuehrer wanted to assign to the Plenipotentiary General *for the direction of labor had to be phrased properly in the constitutional sense. In addition, and this is typical again, I insured that the decree, because it also dealt with prisoners of war, received the concept or participation of the OKW. In addition I saw to it, because it was a problem touching upon international law, that the Foreign Minister be consulted, and then Hitler's will was formulated and cosigned by me.* Thereupon I had to promulgate the decree to the agencies concerned and its publication in the Reich Law Gazette. My instrumentality thus consisted in my coordination in substance merely a matter of form. However, it continued as an independent activity with its own responsibility in the further execution. This again is typical in this respect because the decree states that Departments Three and Five of the Ministry of Labor were to be available to the Gauleiter Sauckel, to the Plenipotentiary General. This regulation was also inserted into the decree itself. *It was not ordered by me but upon my suggestion because I didn't think it proper that the Plenipotentiary General for the direction of labor should set up a new authority.* It was because I thought it proper that he utilized the departments available of the Reich Ministry of Labor. Now, of course, this had to be distinguished, how the utilization of these departments *was to take place and there I myself took the initiative,* but the ultimate decision could not be made by me. However, it was possible for me to get the Plenipotentiary General for Labor Direction Sauckel and the Reich Minister for Labor to a com-

mon denominator and to effect the proper cooperation of these agencies. Had such an agreement not been possible, then I would not have been able to decide this formal case. Then in this case I myself would have had to secure the Fuehrer's decision. I think this case is typical, and very much so, for what I have testified as my coordinating functions in the realm of administrative organization. [Emphasis supplied.]

From the foregoing statements made by the defendant himself in respect to the part he played in the making of laws, decrees and ordinances, it seems very clear that vital and extremely important assistance was given by defendant in translating into law the various programs decided upon by the Reich government. The fact that defendant persists in his effort to minimize the significance of his work in this matter by referring to his actions in connection therewith as being only "formal" does not reduce in the slightest degree the significance of what was in fact done.

As bearing on the question as to whether defendant's activities in legislation were only formal and did not involve the exercise of initiative or discretion, the legal background and experience as given by the defendant himself while on the stand may well be noted. It appears that he was trained in the law, that he became district judge in 1912, that he became a senior government counsellor with the Ministry of the Interior in 1921; that in 1922 he became a Ministerial Councillor, in which capacity he remained until 1933. In this position he handled matters of constitutional and administrative law generally. In particular in such position he dealt with matters concerning the Reichstag and the Reich Council which was described by him as the "organ of the states of the Reich, an organ of the Reich which in the main handled factual legislative work." It appears that in such position he also dealt with constitutional disputes which were disputes between the Reich and the Laender, between the various Laender, and the constitutional disputes within a land. He states (*Tr. p. 19770*):

"All these questions were decided either before the constitutional court or before the Reich Supreme Court. I handled these matters, and I myself, drafted the constitutional law of the Constitutional Court before the Reichstag adopted it, and these disputes were in writing and sometimes verbally represented by me before the Constitutional and Reich Supreme Courts. I'd like to emphasize here that there was another type of constitutional dispute which occupied me far more and these were the constitutional disputes within the Reich."

And further on he continued (*Tr. p. 19773*):

"Then I was concerned with frequently giving opinions on drafts of laws by the ministries, usually from the point of view of the constitution, further, questions as to whether ordinances were legally valid or not, and, to bring this list to an end, I can only say that my work was mainly of a legal nature. Although, of course, these matters always have a certain political content, they were, to a very large extent, of a legal nature."

And finally as a further emphasis to his eminent qualifications in legal and governmental spheres, the following evidence as given by him on the stand must be noted (*Tr. 19775*):

"I wrote a number of books. First of all, a commentary on the law, which I mentioned just now, about the Constitutional Court, in 1922, a law which I had drafted and had handled myself. Then I wrote a book about the Reich Constitution and Reich Administration. Then I wrote a catechism of the Reich Constitution; that was a little book which was to be used in schools for civil law classes. Then I collaborated on articles for various periodicals, for instance, the Handbook of Anschuetz-Thoma, which has been frequently mentioned here. For this I supplied two lengthy articles, one about parliamentary investigation committees, and the other about some question that I have forgotten. Then, I collaborated in the big hand dictionary of legal science by Stier, Vomlo and Elster, also with two fairly lengthy articles. One was called 'Law and Legislation' and the other dealt with the Reichstag. Then, I published six volumes of decisions of the Constitutional Court of the German Reich and the Constitutional Court of German Provinces, together with the late former President of the Reich Supreme Court, Dr. Simons. Then, I wrote masses of articles and theses for legal periodicals, discussed sentences, and so on. These were not political matters, they were all purely academic. Of course, there was a certain political aspect, and sometimes I had some difficulties, and, finally, I withdrew more and more to my writing and to purely reporting work, and not so much to creative work. That is shown, for instance, by the six-volume collection of decisions of the Reich Constitutional Court. That is more in the nature of a commentary, where these decisions are put in the proper order, given headings, and put in a certain systematic order.

"To conclude my answer, there is one thing I wish to add. My research work is quoted in almost all commentaries on the Reich Constitution; and, in particular, the last big commentary on the Reich Constitution, by Anschuetz, makes reference to my articles, usually being in complete agreement with them."

The claim that the office of Chief of the Reich Chancellery when occupied by defendant Lammers was held by a sort of legal automaton who took care only of "formal" matters within the usual acceptance of that term, and was not vested with powers of initiative and discretion in the shaping of legislation is too great a strain upon the Tribunal's credulity.

We will now turn to a consideration of the evidence introduced to show defendant's participation in the creation of laws and decrees and in other alleged acts of participation in the crime of spoliation as charged in this count. We will first consider evidence relating to spoliation in the Netherlands.

It appears that a ruthless program of spoliation was carried out in the occupied Netherlands. A reference to findings of the IMT with respect to the Reich's economic administration of the Netherlands is here pertinent:[1]

> "Seyss-Inquart carried out the economic administration of the Netherlands without regard for the rules of the Hague Convention which he described as obsolete. Instead, a policy was adopted for the maximum utilization of the economic potential of the Netherlands and executed with small regard for its effect on the inhabitants. There was widespread pillage of public and private property which was given color of legality by Seyss-Inquart's regulations and assisted by manipulations of the financial institutions of the Netherlands under his control."

The IMT also described Goering as the[2] "* * * active authority in the spoliation of conquered territory."

The evidence discloses that on 21 May 1940, defendant Lammers sent to the Reich Ministers a document (*NG–1492, Pros. Ex. 2575*) which he transmitted as a "top secret." It was an unpublished Hitler decree signed by Hitler and Lammers, dated 19 May 1940 which decree calls attention to the fact that by a decree of 18 May 1940 Dr. Seyss-Inquart had been appointed as Reich Commissioner for the Occupied Netherlands, which decree indicated that Seyss-Inquart was accountable to Hitler, but it also provided that Goering might issue orders to the Reich Commissioner within the framework of his tasks in this capacity for the Four Year Plan.

Next Lammers advises that the decree submitted is an amendment of the earlier decree of 18 May 1940. From this it can be seen that Goering thus gets specific authority to extend his spoliation activities and sphere into the Netherlands.

It is significant that a report covering from 29 May to 19 July 1940 comes to Lammers in which report designated "top secret,"

[1] Trial of the Major War Criminals, op. cit., volume I, page 329.
[2] Ibid., p. 281.

Seyss-Inquart reports with respect to the situation in the Netherlands and the economic exploitation of such territory. Such report states in part (*997—PS, Pros. Ex. 2576*):

> "It was obvious that the occupation of the Netherlands necessitated a large number of economic and police measures; the economic measures were aimed, on the one hand, at reducing the consumption of the population in order to gain supplies for the Reich, and, on the other hand, in safeguarding the equitable distribution of the remaining supplies."

The report continues further on as follows:

> "In fact the following regulations have up to now been cited by the Dutch Secretaries General or the competent economic official so that all these measures *appear to be voluntary*— All regulations with respect to the collection and distribution of supplies to the population, regulations with respect to restrictions on the forming of public opinion, *and also agreements with respect to the requisition of extremely large supplies for the Reich.*" [Emphasis supplied.]

This report was in August 1940, transmitted by Lammers to Rosenberg.

It appears that on 22 October 1940 a decree was issued (*3333–PS, Pros. Ex. 2581*), signed by Seyss-Inquart, which provided for registration of the Jewish business enterprises in Holland. This was an implementation of the earlier decree signed by Hitler and defendant Lammers, 18 May 1940.

It appears that defendant Lammers, on 18 October 1941 (*NG–049, Pros. Ex. 2578*), reported to the Commissioner for the Four Year Plan, the Reich Minister of Economy, the Reich Minister for Food and Agriculture, and to the Chief of the OKW concerning a conference between defendant Seyss-Inquart and Hitler relative to the food situation and the economic conditions in the occupied Netherlands territories. Here Lammers passes on to the "competent Reich ministers" such report with a request that they follow up the wishes of the Fuehrer, that cooperation with the Reich Commissioner Seyss-Inquart be given.

It appears that on 29 August 1941, Lammers received Goering's so-called "green folder" which was the guide for the control of economy in the newly occupied eastern territories and which set up an Economic Executive Staff East. This directive,* which is elsewhere in the discussion of this count also referred to, provided for "plundering and abandonment of all industry in the food defi-

* Introduced in the IMT as Document USA–315, Prosecution Exhibit 472–EC, and the complete German text appears in Trial of Major War Criminals, op. cit., volume XXXVI, pages 542–545.

cient regions, and from the food surplus regions a diversion of foods to German needs," and further stated:

> "In accordance with orders issued by the Fuehrer all measures must be taken to achieve immediate and most intensive utilization of the occupied territories for Germany's benefit. Thus, all measures which may endanger this aim must be omitted or postponed."

There was some evidence adduced with a view to showing that defendant Lammers had participated in the spoliation of Luxembourg in connection with the Hermann Goering Works taking over certain Luxembourg iron works. It does not appear to the Tribunal, however, that the evidence presented on that point is sufficient to indicate any real participation by Lammers.

We will now consider the charges of spoliation with respect to Poland. In this connection we first wish to call attention to the following findings of the IMT with respect to spoliation in Poland:*

> "In most of the occupied countries of the East even this pretense of legality was not maintained; economic exploitation became deliberate plunder. This policy was first put into effect in the administration of the Government General in Poland. The main exploitation of the raw materials in the East was centered on agricultural products and very large amounts of food were shipped from the Government General to Germany.
>
> "The evidence of the widespread starvation among the Polish people in the Government General indicates the ruthlessness and the severity with which the policy of exploitation was carried out.
>
> "The occupation of the territories of the U.S.S.R. was characterized by premeditated and systematic looting. * * *"

It was with Poland in mind that on 19 October 1939 Goering issued a directive (*EC–410, Pros. Ex. 1286*), which hereinbefore also has been discussed, and which provided for the exploitation of the occupied territories and announced the creation of the Main Trustee Office East.

It appears that one of defendant Lammers' subordinates, Willuhn, later, upon the invitation of the Main Trustee Office East, made a visit to the eastern occupied territories "for the purpose of preparing a decision affecting property rights of some mines and foundries." A full report thereof was made to Lammers. The defendant Lammers indicated in his testimony that he had no particular interest in this trip but that he permitted Willuhn to make it because Willuhn so requested. This report,

* Ibid., Volume I, pp. 240–241.

which indicates clearly that it was in line with the usual exploitation purposes of the Main Trustee Office East, was known to the defendant Lammers.

On 29 May 1941, Hitler and Lammers issued a decree providing for the confiscation of property of enemies of the Reich. This was an obvious device to give a form of legality to illegal seizure of property. Under date of 12 April 1943 a report (*NG–3321, Pros. Ex. 1291*) was made by SS General Krueger and defendant Lammers to Himmler regarding the situation in Poland. Under date of 17 April 1943, Lammers transmitted such a report to Himmler (*NG–4621, Pros. Ex. 1291*). It is to be noted that with respect to the economic tasks in Poland the report said:

> "(1) For the purpose of securing food for the German people, to increase agricultural production and utilize it to the fullest extent, *to allot sufficient rations to the native population occupied with work essential for the war effort and to deliver the rest to the armed forces and the Homeland.*" [Emphasis supplied.]

The general contention of lack of knowledge and lack of participation in the spoliation program cannot be sustained in the face of such evidence.

We come now to the question of spoliation in Russia. On 29 June 1941, just a few days after the invasion of Russia by Germany, a decree (*NG–1280, Pros. Ex. 529*) was issued, signed by Hitler, Lammers, and Keitel, vesting Goering with all necessary authority to institute all measures in the territory occupied "to assure the highest utilization and development of existing stores and capacities of domestic economy in behalf of the German war economy." In considering the question of defendant Lammers' participation in the exploitation of Russia it must not be overlooked that he was one of the small group assembled by Hitler on 16 July 1941 at a policy-making conference with respect to Russia. Those present were Hitler, Rosenberg, Keitel, Goering, Bormann, and Lammers. That Lammers took an active part in such a conference there is no doubt. It was at this meeting that Hitler stated that with respect to Russia (*L–221, Pros. Ex. 527*):

> "On principle we have now to face the task of cutting up the great cake according to our needs in order to be able, first, to dominate it, second, to administer it, and third, to exploit it."

The evidence shows beyond a reasonable doubt that Lammers, with full knowledge of the ruthless program planned for Russia, actively entered into the formulation thereof and signed a number of decrees designed to implement and carry out such program.

Among them, for instance, was a decree (*NG–1280, Pros. Ex. 529*) appointing Rosenberg as Reich Minister for the Occupied Eastern Territories. It appears conclusively from the evidence that as to Russia, defendant Lammers participated in the formulation and execution of the program of spoliation carried through in the occupied territory of that country.

A field of spoliation in which defendant Lammers participated and which he furthered was the plunder of art and cultural treasures in the occupied territories. The important correspondence carried on by him with respect to this matter needs but little discussion. That Lammers' activity in this connection definitely was one of collaboration and furtherance is clear. The plunder of art treasures by the Reich was discussed at some length in the findings of the IMT. There the scope and extent of such program is touched upon. One passage from such judgment is very pertinent here.[1]

> "With regard to the suggestion that the purpose of the seizure of art treasures was protective and meant for their preservation, it is necessary to say a few words. On 1 December 1939 Himmler, as the Reich Commissioner for the Strengthening of Germanism, issued a decree to the regional officers of the secret police in the annexed eastern territories, and to the commanders of the security service in Radom, Warsaw, and Lublin. This decree contained administrative directions for carrying out the art seizure program, and in clause 1 it is stated:
>
> "'To strengthen Germanism in the defense of the Reich, all articles mentioned in section 2 of this decree are hereby confiscated * * *. They are confiscated for the benefit of the German Reich, and are at the disposal of the Reich Commissioner for the Strengthening of Germanism.'"

It appears from the evidence that the office of the Reich Chancellery, and Lammers, cooperated in the carrying out of such confiscation of art treasures in the occupied territories. It also appears that in connection with the plunder of art treasures Lammers was in contact with the director of the State Picture Gallery in Dresden, one Dr. Posse. It is interesting to note that in respect to the same Posse the IMT made the following statement in its judgment:[2]

> "The intention to enrich Germany by the seizures, rather than to protect the seized objects, is indicated in an undated report

[1] Ibid., p. 242.
[2] Ibid., pp. 242–243.

by Dr. Hans Posse, director of the Dresden State Picture Gallery—

"'I was able to gain some knowledge on the public and private collections, as well as clerical property, in Cracow and Warsaw. It is true that we cannot hope too much to enrich ourselves from the acquisition of great art works of painting and sculptures, with the exception of the Veit-Stoss altar, and the plates of Hans von Kulnback in the Church of Maria in Cracow * * * and several other works from the National Museum in Warsaw.'"

On 5 July 1942 defendant Lammers informed all supreme Reich authorities and officers directly subordinate to the Fuehrer that Hitler had authorized Rosenberg to search libraries, lodges, and cultural institutions for the purpose of seizing material from these establishments, as well as cultural treasures owned by Jews. The communication concluded (*Steengracht 66, Steengracht Def. Ex. 66*):

"I inform you of this order of the Fuehrer and request you to support Reichsleiter Rosenberg in the fulfillment of his task."

It is significant that a Holland Einsatzstab report of the bureau of Reichsleiter Rosenberg for the occupied western territories in the Netherlands gave a comprehensive account of the results of the execution of the plunder program of the Reich with respect to art and cultural treasures in the Netherlands. Such report details and catalogs the many items removed from clubs, lodges, and libraries. The following sentence gives an indication of the magnitude of such confiscations (*176–PS, Pros. Ex. 2577*):

"Altogether 470 cases combining material from the aforementioned lodges and from organizations of a similar status were packed and transported to Germany."

A report with respect to treasures taken from occupied territories is also in evidence which covers a period from October 1940, to July 1944. As an indication of the magnitude of the seizures there made, the following sentence from the report is of interest (*1015–PS, Pros. Ex. 2589*):

"Twenty-nine large shipments including 137 freight cars with 4,174 cases of art works."

It appears that 25 portfolios of pictures, containing the most valuable works of the art collections seized in the West, were presented to the Fuehrer on 20 April 1943. Dealing with activities in the eastern territories the report states:

"In the course of the evacuation of the territory several hundred most valuable Russian ikons, several hundred Russian paintings of the 18th and 19th centuries, individual articles of furniture and furniture from castles were saved in cooperation with the individual army groups, and brought to a shelter in the Reich."

The findings of the IMT show that Rosenberg participated in the pillage of private houses in France. It appears that defendant Lammers also became involved in such program. It appears that on 18 December 1941 Rosenberg had requested Hitler's authorization "for the confiscation of all household goods of Jews in Paris who had fled or will flee, as well as in all occupied western territories, in order to assist the administration in procuring household furnishings for the eastern territories." On 31 December 1941 Lammers referred to the 18 December 1941 request made by Rosenberg to the Fuehrer. The letter continues (*NG–3058, Pros. Ex. 2585*):

"The Fuehrer, in principle, agreed to the proposal as made under paragraph 1. Together with the letter enclosed in copy, a copy of that part of your memorandum which deals with utilization of Jewish household furnishings was forwarded by me to the chief OKW and to the Reich Commissioner for the occupied territories of the Netherlands. May I ask you to contact the other interested offices for the execution of your proposal."

It appears that at the same time Lammers informed Keitel with respect to this matter in the following words:

"* * * I have asked the Reich Minister for the Occupied Eastern Territories to contact you; the Reich Commissioner for the Occupied Territories in the Netherlands and the other interested parties for the execution of the proposal. I have forwarded a copy of this letter to the Reich Minister for the Occupied Eastern Territories and the Reich Commissioner for the Occupied Territories in the Netherlands has likewise been informed by me."

It is to be noted that under date of 16 June 1942 a letter from the Reich Chancellery signed by Stutterheim, a subordinate of Lammers, to the Foreign Office stated in part as follows (*NG–5018, Pros. Ex. 3893*):

"(1) The seizure of household effects owned by Jews is to be carried out as inconspicuously as possible. No special ordinance is necessary."

* * * * * * *

"(4) Measure is to be presented, wherever possible, as requisitioning or retribution measure. The Reich Minister for the Occupied Eastern Territories has been informed of these Fuehrer directives."

During a conference on 15 and 17 November 1943, which was attended by Hitler, Bormann, Himmler, Lammers, Lohse, and Rosenberg, a report (*PS–039, Pros. Ex. 2587*) was made by Rosenberg as to the program of the confiscation of Jewish homes and furniture and their transport to Germany. In a subsequent report (*PS–1737, Pros. Ex. 2584*) of 4 November 1943, Rosenberg amplifies the earlier report by stating that it took 19,334 railroad cars to take the haul to Germany, and that several million reichsmarks and 666,000 kilos of scrap material and spinning material were also seized under this program.

In the light of the evidence the Tribunal finds that the defendant Lammers is guilty under count six.

STUCKART

It is specifically alleged against defendant Stuckart, in addition to the general charges made against him in this count, that he formulated and signed various decrees authorizing confiscations of the property in the occupied territories and that he attended various meetings and conferences at which occupation policies were formulated, and received reports concerning the carrying out of such policies, and that he participated in various ways in the furtherance of such policies. It is further specifically alleged that defendant Stuckart was active in the affairs of the Main Trustee Office East, an agency active in the formulation and execution of the program of spoliation in Poland. It is further asserted that Stuckart assisted in the formulation of a program for the fullest possible exploitation of the Soviet economic resources before and after Germany's attack on the Soviet Union, and finally it is asserted that the defendant Stuckart, with other defendants, took part in numerous meetings at which exploitation policies were discussed and plans were made with respect to spoliation in the East.

As heretofore pointed out in our discussion of count five, Stuckart became associated with and active in Nazi affairs at an early date.

The evidence further shows that in 1935 Hitler appointed Stuckart to a position in the Ministry of the Interior where he had charge of division I, which division then had, or subsequently, during Stuckart's incumbency, was given jurisdiction of the following matters:

Constitution and organization
Legislation and administration law
Citizenship and race
New organization in the Southeast
Protectorate, Bohemia and Moravia
New organization in the East
New organization in the West
Reich defense
Military law and military policy
War damages

In 1943 when Himmler became Minister of the Interior defendant Stuckart was appointed State Secretary in the Ministry of the Interior, which position he held until May 1945 when he became Minister of the Interior.

Many other positions of responsibility and authority, each apparently created to implement successive steps of the Reich in its program of invasion and aggression, were given to defendant Stuckart. On 24 March 1938 Stuckart was appointed as Chief of the Central Office for Incorporation of Austria. On 1 October 1938 Stuckart was appointed Chief of the Central Office for the Incorporation of the Sudetenland. On 22 March 1939 Hitler appointed Stuckart as Chief of the Central Office "For the Implementation of the Decree Concerning the Protectorate of Bohemia and Moravia." On 9 August 1940 it was announced that Hitler had appointed Stuckart as Chief of the Central Office for Alsace-Lorraine and Luxembourg. On 12 December 1941 Stuckart was appointed head of the Central Office for Norway. On 22 April 1941 it was announced that Hitler had appointed Stuckart as Chief of the Central Office for the Occupied Southeastern Territories. It further appears from the evidence that on 30 August 1939 Stuckart was appointed Chief of Staff for Reich Minister Frick, Plenipotentiary for Reich Administration in the Ministerial Council for Defense of the Reich. At the same time it appears Himmler was appointed as Frick's deputy. On 30 December 1939 Marshal Goering appointed Stuckart to the General Council for the Four Year Plan.

It would be difficult to believe that in the course of holding the many important offices above referred to Stuckart did not become well informed concerning the economic and administration policies such offices were in fact created to further and implement. That he was thoroughly conversant with such economic and administrative programs and that he exercised wide powers and prerogatives in several of the offices thus established appears conclusively from the evidence. It further appears that in the exercise of the powers thus vested in him the defendant participated

in the violation of the Hague Convention with respect to the military occupation of the occupied territories here under consideration. As will later appear, the defendant denied criminal participation in such spoliation program. In view of this it is desirable that we discuss in some detail the evidence presented in connection with this count.

It appears that on 30 May 1939 a conference was held relative to war financing, attended by representatives from the following ministries and agencies of the Reich: Ministry of Economics, Ministerial Council for Defense of the Reich, Reich Finance Ministry, Four Year Plan, Reich Bank, Supreme Command of the armed forces, and the Reich Ministry of the Interior. The Reich Ministry of the Interior representatives at such conference were Dr. Danckwerts and one Jacobi. They apparently represented Stuckart as their report of such meeting to the Plenipotentiary General for the Reich Administration in the Reich Ministry of the Interior indicates that attention thereto should be given by Under Secretary Dr. Stuckart or his deputy. The report thus submitted to Stuckart among other things stated:

> "First, as concerns the scope of the total production, it is clear that the economic power of the Protectorate and of other territories possibly to be acquired, must of course be completely exhausted for the purposes of the conduct of the war. It is, however, just as clear that those territories cannot obtain any compensation from the economy of Greater Germany for the products which they will have to give us during the war, because their power must be used fully for the war and for supplying the civilian home population. It is therefore superfluous to add any amount for such compensation to the debt of the domestic German war financing."

It is stated further that:

> "It goes without saying that the question of covering the minimum requirements of the civilian population during the war in the countries coming into our scope of government, will remain a domestic task of such countries."

It is significant that on 12 July 1939 a decree (*NG–3741, Pros. Ex. 642*) was issued by the Reich Minister of the Interior, signed by one Pfundtner, which decreed that:

> "All real estate and personal chattels in the Protectorate of Bohemia and Moravia which were the property of the former Czechoslovak Republic, at 6 o'clock on 15 March 1939, and which were meant entirely or partly for the purposes of the Czechoslovak Wehrmacht, Air Force, and the Meteorological

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Service, are transferred as from that date to the ownership of the Reich. * * *"

In this connection it must be remembered that it was Stuckart who in March 1939 had been appointed chief of the Central Office "For the Implementation of the Decree Concerning the Protectorate of Bohemia and Moravia." On 3 October 1939 an ordinance was issued relating to the loss of citizenship in the Protectorate, such ordinance being an implementation of the decree of the Fuehrer and the Reich Chancellor of 16 March 1939 concerning Bohemia and Moravia. This ordinance provided for revocation of the citizenship of members of the Protectorate who were living abroad if they had "acted in a manner detrimental to the interests of the Reich or damaging to the reputation of the Reich." Loss of citizenship would also be suffered by members of the Protectorate who did not return home on request of the Reich Minister of the Interior. It was provided that the property of persons thus losing their citizenship would be forfeited to the Reich. Such ordinance was signed by the Minister of the Interior and by von Ribbentrop and Schwerin von Krosigk. In October 1939 another decree was signed by Frick, Minister of the Interior, and Schwerin von Krosigk, which provided for the confiscation of property of persons living within the Protectorate who had committed acts hostile to the Reich. The Minister of the Interior and the Reich Protector for Bohemia were, by the terms of such decree, authorized to determine what tendencies were to be considered "deleterious" to the Reich.

It must here be noted that the evidence shows that a series of meetings of the Reich Defense Council, under the chairmanship of Goering, were held between 1 September 1939 and 15 November 1939, both inclusive. It appears from the evidence that defendant Stuckart attended all of the meetings. It appears that at such meetings a wide range of important matters were gone into and considered, examples of which are ratification of decrees, such as decree for war economy, decree for change of the military service law, decree about the organization of the administration and about the German Safety Police in the Protectorate of Bohemia and Moravia, decree about appointment of Reich defense commissioners, and questions relating to the civil administration in the occupied Polish territory, and particularly concerning the economic evacuation measures in that territory. It is important at this point to take note of the general policy of the Reich with respect to the economy of the occupied territories as announced by Goering on 19 October 1939 in a letter directed to the Reich Ministers, business groups, and General Plenipotentiaries for the

Four Year Plan. In such letter Goering states that (*EC–410, Pros. Ex. 1286*):

"The *task* for the economic treatment of the various administrative regions is different, depending on whether a country is involved which will be incorporated politically into the German Reich, or whether the Government General is involved, which in all probability will not be made a part of Germany. In the *first-mentioned territories, the reconstruction,* development and safeguarding of all their productive facilities and supplies must be aimed at, as well as a complete incorporation into the Greater German economic system, at the earliest possible time. On the other hand, there must be removed *from the territories of the Government General all raw material, scrap materials, machines,* etc., which are of use for the German war economy. *Enterprises* which are not absolutely necessary for the meager maintenance of the bare existence of the population must be *transferred to Germany,* unless such transfer would require an unreasonably long period of time * * *."

In order to carry out the policy thus announced, he also announced the founding of Main Trustee Office East which would be under his own authority, and the purpose of which was among other things, to register the property of the Polish State, and also private Polish and Jewish property within the territories occupied by German troops, and the safeguarding of an orderly administration, and further for the regulation of economic measures which were deemed necessary for the transfer of the economic direction to the various administrative territories, and the settlement of all disputes and accounts in connection therewith. It was provided that the principal trustee office was to be located in Berlin, but separate trustee offices for the various administrative regions included were to be established. Subsequently, and prior to 5 January 1940, Goering issued a series of decrees and ordinances in connection with the said office. It is significant that under date of 5 January 1940, defendant Stuckart issued a letter (*NG–1707, Pros. Ex. 2160*), directed to various Reich ministers, stating that the Director of the Main Trustee Office East had expressed to Stuckart a wish that before any laws or decrees or other legal provisions were issued affecting the tasks of an office the Main Trustee Office East would be given opportunity for comment. Stuckart, in this manner, calls attention to the fact that the duties of the Main Trusutee Office East were established by Goering in that official's letter of 19 October 1939, and then concludes (*1707–PS, Pros. Ex. 2160*):

"In the interest of the unified execution of possible legislative measures, I ask that the wish of the Main Trustee Office East be taken into consideration."

This clearly demonstrates that Stuckart at such early date, was actively engaged in securing full cooperation from other Reich officials and agencies for the Main Trustee Office East and its announced purposes and program.

On 12 February 1940, a decree (*NO–2049, Pros. Ex. 2510*) which therein stated to be in accordance with Article VIII of a decree of 8 October 1939, issued by the Fuehrer and Reich Chancellor, relative to the structure and administration of the eastern territories, was signed by the Reich Minister of Economy and by Stuckart for the Reich Minister of the Interior. Such decree provided for the assignment of the coal mines for the so-called Incorporated Eastern Territories to the district of the Upper Silesian Coal Management, and gave the Reich Minister of Economy wide and arbitrary powers with respect to the coal industry thus taken over. It further appears that on 8 May 1940, defendant Stuckart signed a decree (*NG–2043, Pros. Ex. 1403*) of the Reich Minister of the Interior whereby it was provided that through agreement with the Main Trustee Office East, German communities in occupied eastern territory should, without further legal formality, become the owners of the property of the Polish community. Again on 12 June 1940, defendant Stuckart signed a decree (*NG–2047, Pros. Ex. 1404*) of the Reich Minister of the Interior which provided that property seized from the former Polish state, Polish nationals, and Polish Jews, by police and other authorities, should be registered with the Main Trustee Office East by 1 July 1940. The decree also states in part:

"I respectfully request to take all necessary measures immediately and to instruct the Landraete, Lord Mayors, Mayors and local police authorities to hand over the seized and safeguarded assets on request of the Main Trustee Office East."

It appears from the terms of the decree that the property in contemplation was as follows: Money, specie, and bills; stocks and other securities of all kinds; bills of exchange and checks; mortgages and land charge deeds; unclaimed gold and silver; foreign exchange; cut and uncut precious stones; and other valuables.

The evidence further discloses that on 24 September 1940 a meeting of a committee, called Political Trade Committee, was held in Berlin, attended by high Reich ministers. The Reich Ministry of the Interior was represented at said meeting by Ministerialdirektor Ehrensberger who was Stuckart's deputy. The minutes of such meeting disclose that consideration was given to

the questions of confiscating French, Belgian, and Polish gold, and the taking over of shares of stock in Rumanian oil companies owned by the French.

While such evidence does not affirmatively show that the report was read or seen by defendant Stuckart, it is to be noted that on 19 November 1940 Senior Councillor Jacobi of the Ministry of the Interior, and in fact a subordinate of Stuckart, transmitted to the Foreign Office a copy of a report of the Military Commander of Belgium and northern France (*NG–2380, Pros. Ex. 1685*). Such report detailed the spoliation activities in Belgium and northern France, and described the hardships resulting therefrom to the inhabitants of the territories affected. That this highly important information would be handled by a subordinate and transmitted on to the Foreign Office without Stuckart's receiving information as to the contents may be possible but highly improbable.

The evidence further shows that between 20 December 1939 and 24 June 1941 several important meetings of the General Council for the Four Year Plan were held and that at practically all of these Stuckart was present or was represented by deputy. At such meetings extended discussions were had concerning a wide range of subjects relating to the prosecution of the war. Particularly significant is the top secret meeting of 24 June 1941 attended by the defendant Stuckart and presided over by State Secretary Koerner. In this meeting, among the many discussions had and reports made, the minutes indicate that Koerner stated that (*NI–7474, Pros. Ex. 582*):

> "The entire economic command in the newly occupied eastern territories is in the hands of the Reich Marshal as Plenipotentiary for the Four Year Plan. The Reich Marshal is to make use of the services of the Economic Operations Staff East which consists of the representatives of the leading departments. The measures are to be carried out by the Economic Staff East under the leadership of Lieutenant General [Major General] Schubert, who is supported for the industrial sector by Ministerialdirigent Dr. Schlotterer, and for the agricultural sector by Ministerialdirektor Riecke.
>
> "The Economic Command in the newly occupied territories should direct its activities to extracting the maximum quantities of goods required for the war effort, particularly steel, mineral oil, and food. All other points of view should take second place."

It appears that Stuckart's Division I, Southeast, in the Ministry of the Interior exerted influence in shaping policy with respect

to the exploitation of property of former Yugoslavia, for this department, in a letter dated 23 August 1941, suggested that the pattern followed in the former Czechoslovakian state with respect to the territories incorporated with the Sudetenland be used with respect to Yugoslavia.

The active participation by Stuckart in the program of spoliation in the southeastern territories is clearly demonstrated in an exchange of correspondence between him and other high Reich officials with respect to the confiscation and seizure of property belonging to nationals and juristic persons of the former Yugoslavian state. Such correspondence shows that Stuckart made recommendations and Stuckart reported to Goering and Schwerin von Krosigk the decision finally made with respect to such matter at "a discussion which took place in my ministry of 18 September 1941."

The evidence discloses that Goering's Economic Management Staff for the East took an important part in the spoliation program in the East, and that Stuckart was invited to the meetings of this body. On 18 November 1941 a secret memorandum of a meeting of the Four Year Plan, Economic Management East, was transmitted to the Ministry of the Interior. This enunciated some of the principles for the economic policy to be pursued in the recently occupied eastern territories. One principle was that such occupied eastern territories were to be economically exploited from colonial views and by colonial methods. This memorandum indicated, among other things, that only the Germans located or to be settled there and the elements to be Germanized were to be assured adequate living standards.

Under date of 24 October 1942 a decree (*NG–3794, Pros. Ex. 636*), signed by Stuckart and State Secretary Reinhardt, deals with the confiscation of property in the Protectorate of Bohemia and Moravia. It defined the cases in which the Ministry of the Interior would decide what property was to be deemed enemy property.

As hereinbefore indicated, defendant Stuckart, in testifying in his own behalf, denied criminal participation in the spoliation charges made in this count. In support of this position evidence was adduced from other witnesses, some of whom had been associated with him in the Ministry of the Interior. Explanations, all-inclusive in their scope, were made through such testimony to show that the defendant knowingly did not participate in the acts of spoliation charged against him. Such explanations to be accepted as true would mean that defendant Stuckart occupied, in the various important positions which he held, offices without any authority to shape policy or to implement the exe-

cution of Reich programs and legislation. Such a conclusion, however, is completely out of harmony with the nature of the offices held by the defendant and with the evidence which overwhelmingly demonstrates that Reich officials repeatedly looked to and called upon defendant Stuckart for participation and help. Furthermore, the record discloses that defendant Stuckart was a man of large capacities and came to the various offices after he had demonstrated capacity which made him a fit incumbent for the offices given him by the Reich government from time to time. He certainly was not the innocuous figurehead official that the explanations offered in evidence would tend to make him seem.

That defendant Stuckart himself indicated that he had taken active part in the program of economic spoliation of the occupied territories, and that he had ambitious plans for the extension of said program is amply indicated in a letter by him to Heinrich Himmler under date of 16 June 1942, concerning the founding of an "International Academy for Political and Administrative Sciences." In such letter Stuckart states in part (*NG–3385, Pros. Ex. 1416*):

> "* * * Already last year, I closed the Brussels Institute in a manner which will secure the transfer of its research material, its library, and personnel card index, and the scientific card indexes to an institution serving the interests of the Reich. All documents are in my custody.
>
> "The securing of the German claim for leadership of Europe will essentially depend on winning over the politically active and intellectually dominant forces of the important European nations for a continent under the leadership of the Reich. In this connection and in view of the task of political, economic and social reformation of Europe, which has fallen to Germany through the war events, special significance must be attached to the penetration of the economy and administration of the European people in the disguise of political and administrative sciences."

The Tribunal finds the defendant Stuckart guilty under count six.

BERGER

In addition to the general charges made against defendant Berger under this count it is also specifically alleged therein that the defendant Berger, as liaison officer between Rosenberg, Reich Minister for the Occupied Eastern Territories, and Himmler, was active in the execution of the various parts of the plans for

spoliation in the East, and that Berger, as chief of the political directing staff of the Reich Ministry for the Occupied Eastern Territories, assumed charge in 1943 of the central office for the collection of cultural objects, and that thus he was an active participant in the transfer to Germany of a vast number of art treasures and other articles seized in the East.

Evidence adduced by the prosecution was directed to prove that, in his capacity as liaison officer between Himmler and Rosenberg, defendant Berger coordinated the work and authority of Himmler and Rosenberg in the carrying out of the spoliation program in the eastern territories, with respect to food and agricultural products. A number of items of documentary evidence were introduced by the prosecution, showing that Himmler transmitted directives relating to the collection of raw materials in the eastern territories to Berger, and requested that such matters be brought to the attention of Rosenberg, head of the Reich Ministry for the Occupied Eastern Territories. Nowhere does it appear, however, that defendant transmitted such documents or orders to Rosenberg. Nowhere do we find an acknowledgment from Berger indicating his cooperation with Himmler in this connection. Witnesses called by the prosecution also failed to show a real participation by Berger in said program of spoliation. One prosecution witness testified that he had not seen any orders or directives issued by Berger in connection with the execution of the spoliation program relating to food and agricultural products in the eastern occupied territories, but stated that he had been told by another that Berger issued such directives and orders.

In answer to such testimony and contentions of the prosecution, we have the testimony of two witnesses who were, by reason of their position, conversant with the food procurement program in the eastern territories during the times in question. One was Hans Joachim Riecke who, from August 1939 until May 1942, was employed in the Reich Ministry for Food and Agriculture, first as Ministerial Director, and later as State Secretary. It appears that he also was head of the Executive Group A, food and agriculture, in the Economic Staff East, and in the Ministry for the eastern territories. His testimony was to the effect that Himmler had been asked to make guard personnel available, in connection with the procurement of certain foodstuffs, and that in issuing an order indicating that he had charge of the collection of food, which he sought to transmit through Berger, as liaison officer, to Rosenberg, he was overreaching his authority, and that such order had no effect whatsoever and did not really affect spheres of jurisdiction, and that the crop collection thereafter continued

as before in the hands of the agriculture agencies, that is, in the control office of Executive Group A for food and agriculture of the Economy Staff East and of the Ministry for the eastern territories, and regionally with the economy inspectorates and Reich commissars, respectively. This witness concluded his testimony that, because of such spheres of jurisdiction which had been clearly defined for this field, Berger could not have had anything to do with the collection of the harvest, and that he, the witness, had never heard of any such thing during his term of office.

The other defense witness on this phase of the charges against Berger was one Helmuth Koerner, who, apparently, was director of the executive group for agriculture of the Economic Inspectorate South from June 1941, and from October 1941 to the end of the war he also was director of the Main Food and Agriculture Department under the Reich Commissioner for the Ukraine. This witness states that he was advised that one SS Police Leader Preussner had received an order from Himmler concerning the securing of the harvest, but that this did not change the spheres of jurisdiction as theretofore existing, and that the seizure of harvest remained the task of the Economic Inspectorate South and the related offices of the Reich Commissioner for the Ukraine.

This witness also testified that he did not come across the name of Berger during his entire period of activity in the area of his jurisdiction in the East.

The Tribunal is of the opinion that it has not been proved beyond a reasonable doubt that defendant Berger did participate in the spoliation of food and agricultural products in the eastern territories, as charged in this count.

With respect to the accusation that Berger participated in the looting of art treasures in the Occupied Eastern Territories, considerable evidence was adduced by the prosecution. Reference is made to the findings of the IMT, which showed that a program of the Third Reich was being carried out, which detailed an extensive seizure of art treasures and scientific apparatus in the Occupied Eastern Territories. That such program was being carried out, there is no doubt. It appears from the evidence that on 7 April 1942, Dr. Georg Liebbrandt, while he held the position of Chief of the Main Department for Politics [of the Reich Ministry for the Occupied Eastern Territories], issued an order directed to the Reich Commissioner for Ostland at Riga, and to the Reich Commissioner for the Ukraine at Rowne, placing the task and responsibility for the seizure of art treasures in the Eastern Occupied Territories exclusively in the hands of Rosenberg's Einsatzstab. Such order stated in part (*151–PS, Pros. Ex. 2410*):

"I have assigned Reichsleiter Rosenberg's Einsatzstab for the occupied territories with the seizure and competent handling of cultural goods, research material, and scientific apparatus from libraries, archives, scientific institutions, museums, etc., which are found in public, religious, or private buildings. The Einsatzstab begins its work, as recently directed by the Fuehrer decree of 1 March 1942, immediately after occupation of the territories by the combat troops, in agreement with the Chief of Supply and Administration of the Army [Generalquartiermeister des Heeres] and after civil administration has been established, continues it in agreement with the competent Reich commissioners until final completion. I request all authorities of my administration to support, as far as possible, the members of the Einsatzstab in carrying out all measures and in giving all necessary information, especially in regard to objects which may have been already seized from the Occupied Eastern Territories and removed from their previous location, and information as to where this material is located at the present time."

Further on the order recites:

"All authorities of my administration are hereby instructed that objects of the aforementioned type will be seized only by Reichsleiter Rosenberg's Einsatzstab, and to stop from arbitrary handling as a matter of principle."

It appears that Leibbrandt ceased to be such Chief of the Main Department for Politics in August 1943, and defendant Berger became charged with the direction of the political directing staff in the territories under consideration. This, it is argued by the prosecution, involves the defendant Berger in the spoliation program as to art treasures in the Occupied Eastern Territories, so as to make him criminally guilty under this count. There was no testimony, either oral or documentary, indicating that after Berger in August 1943, succeeded to the office and authority formerly held by Leibbrandt, Berger did anything to implement or further the program of spoliation with respect to art treasures, as originally launched in the Eastern Occupied Territories by Leibbrandt in behalf of the Reich. On the other hand, it appears that by the time Berger assumed the former duties and authority of Leibbrandt, the spoliation program with respect to art treasures in the Occupied Eastern Territories had been carried forward to a very considerable extent. The IMT judgment makes the following reference to the progress of this program, as of October 1943:*

* Trial of the Major War Criminals, op. cit., volume I, page 242.

"The scale of this plundering can also be seen from the letter from Rosenberg's department to von Milde-Schreden, in which it is stated that during the month of October, 1943, alone, about 40 box cars loaded with objects of cultural value were transported to the Reich."

Attention is called by the prosecution to the fact that his activity was subsequent to the time when Berger became chief of the political directing staff. This, however, does not, in view of the orders already referred to, indicate that defendant Berger did anything to advance or further the spoliation program which had already been inaugurated. There is no evidence to indicate that he did so. The only indication of any participation to any degree whatsoever on the part of Berger is that in September 1944, one Milde-Schreden, already referred to in the above excerpt from the IMT judgment, reported to Berger (*NG–4353, Pros. Ex. 2411*) that 85 wooden crates of paintings and other art objects had been taken from Kiev and Kharkov by the Reich Commissioner for the Ukraine, and were now safely stored in East Prussia. It appears that he included a long list of the items comprising such seized art objects. He requests that the defendant Berger place his signature on a draft of the inventory thus submitted, since—

"In accordance with the decision of the Reich Chancellery dated 18 November 1940, it appears necessary that an inventory of the items be submitted to the Fuehrer."

It appears from the record of the testimony that the list was passed through Berger's hands on to the proper agency. There is no other evidence of Berger's participation in such spoliation program inaugurated pursuant to Reich authority, prior to his taking office as chief of the political directing staff, and which program, it appears from the evidence, had been vigorously executed and carried forward prior to Berger's assuming the office of Leibbrandt, and which, therefore, probably did not require any direction from Berger's office.

The Tribunal is of the opinion that, under the evidence adduced, it must and hereby does find defendant Berger not guilty under this count.

KOERNER

We come now to a consideration of the charges in count six as they apply to defendant Koerner. Specific allegations are made against defendant Koerner as follows: That as permanent deputy of Goering, the Plenipotentiary of the Four Year Plan, Koerner in fact headed the work of the Office of the Four Year

Plan in fixing foodstuff quotas for the occupied areas, and that as Goering's representative for the Economic Executive Staff East, an organization established to organize and direct economic spoliation of the occupied eastern territories, he was an active participant. It is asserted that this organization contemplated the abandonment of all industry in the food deficient regions and the diverting of food to German needs in food surplus regions. It is asserted that the defendant Koerner with the defendant Pleiger, as individuals who largely influenced and controlled the Hermann Goering Works, secured ownership and control of plants and properties in Czechoslovakia. It is further alleged that Koerner, with other defendants, even before the attack on the Soviet Union, assisted in the formulation of a program for the fullest possible exploitation of all Soviet economic resources, and that he actively participated in the carrying out of such program after the attack on the Soviet Union. It is also alleged that Koerner, as deputy to Goering, the Plenipotentiary for the Four Year Plan, participated in the formulation and execution of measures under a decree of 21 June 1943, which directed the Plenipotentiary for the Four Year Plan to order all necessary measures in the newly occupied eastern territories for the fullest exploitation of supplies and economic power found there for the benefit of the German war economy, and it is specially alleged that defendant Koerner, during the period from August 1941, to March 1943, was chairman of the Verwaltungsrat (Supervisory Board) of the Berg- und Huettenwerke Ost G.m.b.H., commonly referred to as BHO, the "trustee" for the iron, steel, and mining industry, which, it is asserted, was the main spoliation agency in its field of operations.

At the outset of our consideration of charges against Koerner under this count it is important that note be taken of various positions of authority and responsibility held by defendant Koerner in the government of the Third Reich during the times under consideration.

Defendant Koerner was deputy of Goering as the Plenipotentiary of the Four Year Plan, and Chief of the Office of the Four Year Plan from 1936 to 1945.

He was chairman of the General Council of the Four Year Plan from 1939 to 1942.

He was member of the Central Planning Board from 1942 to 1945.

He was State Secretary to the Plenipotentiary for the Four Year Plan from 1936 to 1945.

He was deputy head of the Economic Executive Staff East from 1941 to 1945.

He was Chairman of the Verwaltungsrat of the Berg- und Huettenwerke Ost [Mining and Smelting Works East, Inc.], G.m.b.H., commonly known as the BHO from 1941 to 1943.

He was Chairman of the Aufsichtsrat of the Reichswerke fuer Ezrbergbau und Eisenhuetten [Reich Works for ore mining and iron smelting] "Hermann Goering" from 1937 to 1942.

He was Chairman of the Aufsichtsrat of the Reichswerke A.G. fuer Berg- und Huettenbetriebe [Reich works for mining and smelting enterprises] "Hermann Goering" from 1940 to 1942.

We will first consider the charges of spoliation directed against the defendant as to Czechoslovakia (Bohemia and Moravia). In the course of the defendant's examination in his own behalf he was asked whether he had ordered the acquisition of the Skoda and Vitkovice plants in Bohemia and Moravia. The defendant replied that on 15 March 1939, Goering had ordered him to acquire Skoda, Z-Waffen, Poldi and Vitkovice "insofar as they could be acquired by purchase." The evidence adduced by the prosecution to show participation by Koerner in these "purchases" is rather weak. The Tribunal is not disposed to supplement such evidence by surmise. It is the contention of the prosecution that a possible finding by the Tribunal that defendants Rasche, Kehrl and Pleiger are guilty with respect to these transactions would require a finding that defendant Koerner, too, is guilty in these transactions as having ordered and abetted and having taken a consenting part therein. On the evidence offered, however, such contention by the prosecution is untenable.

With respect to charges of spoliation in Poland, attention must again be called to the fact that within a month after the commencement of the German invasion of Poland, Goering, as Plenipotentiary of the Four Year Plan, issued a decree heretofore referred to in our discussion of the charges made with respect to other defendants under this count. Such decree provided for reservation to him, Goering, of the right of the uniform economic supervision of Poland. On 19 October 1939, he issued a directive or decree announcing the establishment of the Main Trustee Office East as an exploitation measure. Goering at this time laid down the proposition that "enterprises which are not required for the meager maintenance of the naked existence of the population must be transferred to Germany."

It must be borne in mind that defendant Koerner was, during this time, Goering's deputy in the Four Year Plan in which position he actually exercised considerable discretionary authority. Koerner sent out the proclamation of the establishment of the Main Trustee Office East 1 November 1939. The evidence further discloses that defendants Koerner and Schwerin von Krosigk

were among those present at a top secret meeting under the chairmanship of Goering on 12 February 1940 at which meeting Goering announced that, "The strengthening of the war potential of the Reich must be the chief aim of all measures to be taken in the East." The report (*EC–305, Pros. Ex. 1289*) indicates that with respect to agriculture it was decided that, "The task consists of obtaining the greatest possible agricultural production from the new eastern Gaue, disregarding questions of ownership." With respect to the subject of "trade economy" the report of the meeting states in part:

> "The main thing here is the petroleum which must be exploited and transported into the Reich regardless of how the payment for it is to be arranged. The mining of ore must also be pressed forward."

It seems that from time to time Goering specifically broadened the scope of the HTO organized, as hereinbefore stated, as an exploitation agency for the Reich with respect to Poland. Among such decrees was one (designated therein as ordinance) dated 12 June 1940 (*NO–4396, Pros. Ex. 2162*) which designates the Main Trustee Office East (HTO) as "an office under the jurisdiction of the Plenipotentiary for the Four Year Plan." The ordinance provided in part that HTO had authority for the registration and administration of property belonging to nationals of the former Polish State and, among other things, stated that (*NO–4396, Pros. Ex. 2162*):

> "The Main Trustee Office East is authorized to execute legally final transfers of property in pursuance of directives issued by me.
>
> * * * * * * *
>
> "The Main Trustee Office East is the only authorized agent to order confiscation, to appoint and dismiss administrative commissioners within the framework of the duties assigned to it.
>
> * * * * * * *
>
> "The Main Trustee Office East will issue ordinances and administrative regulations required for the execution of its duties.
>
> * * * * * * *
>
> "The Police authorities will be at its disposal for the forcible execution of its measures in pursuance of the provisions of an agreement concluded with the Reichsfuehrer SS and Chief of the German Police."

Goering on 17 September 1940 issued a further decree which, among other things, provided that, "The property of the citizens

of the former Polish State is subject to seizure, property custodianship and confiscation. Seizure is to be performed in the case of property, (a) of Jews, and (b), of persons who have fled or who are not only temporarily absent." The decree provided that (*NO–4672, Pros. Ex. 2163*):

> "The necessary administrative regulations for carrying out these orders will be issued by the Plenipotentiary for the Four Year Plan and the Main Trustee Office East in collaboration with the responsible authorities."

Therefore it appears that decrees were issued to implement the said decree of 17 September 1940 and which turned over the administration of confiscated property of Polish nationals to the HTO. Another decree was issued by Koerner providing for the issuance of necessary regulations for the execution of the ordinance concerning treatment of property of the "former Polish State" and which provided that such, as far as possible, be issued in agreement with the Reich Commissioner for Strengthening of Germanism.

Presented in evidence was a report (*NI–3724, Pros. Ex. 3233*) by the head of the HTO, dated 20 February 1941, which gives an impressive account of the extent of the program carried out by the HTO pursuant to the decree of 17 September 1940 above alluded to. Through the HTO much property was plundered and taken over by the Reich. Attention is called to the fact that defendant Koerner was chairman of the Aufsichtsrat of the Hermann Goering Works, which organization, according to a report in evidence, was the recipient of considerable property seized in Poland through the Main Trustee Office East. Notable among the property thus mentioned were certain brick works.

The evidence adduced in the case disproves the statement of Koerner as made by him on the stand that he had what amounted to only perfunctory information concerning the HTO and its activities. It is true that Goering was vested with supreme authority in matters falling within the sphere of such organization, but it is clear that Koerner, as his deputy, in the light of the evidence introduced in the case, was given and in fact exercised wide powers of responsibility in the HTO, which powers and authority were sufficiently great and of such discretionary nature as to have enabled Koerner to strongly influence the policy of, and to further the work and purposes of the HTO in the spoliation program in Poland.

We come now to consideration of the charges of spoliation with respect to Lorraine in France. The evidence establishes to the satisfaction of the Tribunal that defendant Koerner participated

in the spoliation of Lorraine as deputy to the Plenipotentiary of the Four Year Plan. German industrialists began to vie with each other for acquisition of plants in Lorraine after such territory had come under the domination of the German Reich, and it seems it was to Koerner some of these industrialists appealed. From the evidence it appears that the Hermann Goering Works was among those who made claims with respect to certain plants in the Lorraine. Attention is here again called to the fact that Koerner was at this time chairman of the Aufsichtsrat of the Hermann Goering Works. It is futile for defendant to attempt to minimize the nature of his activity in the Lorraine spoliation. A letter dated 29 October 1940 written by Koerner to defendant Pleiger, the general director of the Hermann Goering Works, comments on the claims made by the Hermann Goering Works to plants of the DeWendel concern in Lorraine, that is, coal mines and foundries, along with certain other plants in the Lorraine, and recommends that Pleiger submit a legal and suitable claim to the Reich Minister of Economics and then states (*NID–15558, Pros. Ex. 3769*):

> "I am reserving my decision as to appropriate support of your application of which I request a copy."

It should be noted too in this connection in testifying in his own behalf, defendant upon being asked if he had been connected with the taking over of the French firm of DeWendel in Lorraine by the Reichswerke, answered as follows:

> "Yes, in my capacity as chairman of the Aufsichtsrat of the Reichswerke."

It appears that ultimately some of the DeWendel plants were allocated to the Hermann Goering Works under terms which are hereinafter alluded to in connection with our treatment of the spoliation charges against Pleiger. Allocation under the terms under which it was done clearly constitutes a violation of the Hague Conventions, and it has been so held in the prior judgments of other Nuernberg tribunals.

With respect to charges of spoliation in Russia, the prosecution has charged defendant Koerner with having participated in the planning and preparation for spoliation of Russia, even before the invasion of that country by Germany. The evidence shows that as early as November 1940 General Thomas, Chief of the Economic Armament Division of the General Staff, and defendant Koerner and others were "informed by the Reich Marshal of the action planned in the East." The defendant in the course of his testimony was disposed to minimize the prosecution showing with

respect to this matter by asserting that there was nothing aggressive contemplated. Defendant finally admitted, however, that "it was only about 10 days before the actual outbreak" that he "came to hear anything at all of the date set."

The evidence abundantly shows that Koerner was included in some conferences where the economic program with respect to the Russian territory contemplated for invasion was considered and planned. It is significant that when an economic program was presented to Goering by Thomas, Chief of the Economic Armament Office, Thomas reporting in connection therewith stated in part as follows (*1456–PS, Pros. Ex. 1050*) :

> "(1) Organization Barbarossa. The Reich Marshal fully agrees with the organization which was proposed to him. The following persons shall become members of the executive staff: Koerner, Backe, Henneken, Alpers, and Thomas. The Economic Armament Office will be the executive office."

This report was dated 19 March 1941 approximately 3 months before the beginning of the invasion of Russia by the Reich.

Study of the conferences referred to disclose that a program of spoliation was contemplated. It should be noted that only 2 days after the invasion, that is, 24 June 1941 it was defendant Koerner, acting as chairman of the General Council of the Four Year Plan, at a meeting held on that day, who reported with respect to the Economic Operation Staff East and the Economic Staff. The report of the said meeting states in part (*NI–7474, Pros. Ex. 582*) :

> "State Secretary Koerner opened the meeting and stated that owing to preparations for the case of war with Russia (Eventualfall 'Russland'), the convocation of the General Council had to be omitted up to now. Since fighting in Russia has now started, he was able to make the following statements about the work which has been done within the Economic Executive Staff East:
>
> "The entire economic command in the newly occupied eastern territories is in the hands of the Reich Marshal as Plenipotentiary for the Four Year Plan. The Reich Marshal is to make use of the services of the Economic Executive Staff East which consists of the representatives of the leading departments. The measures are to be carried out by the Economic Staff East under the leadership of Lieutenant General [Major General] Schubert, who is supported for the industrial sector by Ministerialdirigent Dr. Schlotterer, and for the agricultural sector by Ministerialdirector Riecke.

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"The economic command in the newly occupied territories should direct its activities to extracting the maximum quantities of goods required for the war effort, particularly steel, mineral oil, and food. All other points of view should take second place.

"The necessary organization is in existence and will be utilized in accordance with the progress of the military operations.

"State Secretary Koerner gave State Secretary Backe permission to speak about the food situation."

It must not be overlooked that in July 1941 Goering issued what has come to be known as the "green folder" which was issued "for official use only" and contained directives "for the operation of economy in the newly occupied eastern territories." The International Military Tribunal judgment made the following statement concerning the "green folder":*

"This directive contemplated plundering and abandonment of all industry in the food deficit regions and, from the food surplus regions, a diversion of food to German needs."

We here call attention to the following from said "green folder" (*NI–6366, Pros. Ex. 1054*):

"Economic Organization.

a. In general—For the uniform direction of the economic administration in the areas of operations and in the areas of the future political administration, the Reich Marshal has created the Economic Executive Staff East which is responsible directly to him and which, in the absence of the Reich Marshal, is directed by State Secretary Koerner."

That defendant Koerner's position in this spoliation organization was recognized as one of power and importance is obvious from the respect given it by Rosenberg, the Reich Minister for the Occupied Eastern Territories, for in a recital contained in a directive issued by him relative to the civil administration in the occupied eastern territories contained in what is known as the "brown folder" he stated (*NI–10119, Pros. Ex. 1055*):

"The Reich Marshal formed the Economic Executive Staff East (directed by State Secretary Koerner as his deputy) in which all the departments concerned are unified and are given the possibility to state their points of view and to influence all the decisions concerning the eastern territories."

The record discloses that defendant Koerner did not display any particular reluctance in assuming the authority and powers thus

* Ibid., page 281.

vested in him. In the course of a decree issued by Koerner in September of 1942 it states as follows (*EC–347, Pros. Ex. 1058; Koerner 450, Koerner Ex. 176*):

"VI. The directives required in the interest of German war economy and concerning the economic exploitation areas put under civil administration will be issued by me through the Economic Executive Staff East. It will especially fix the quantities of food and industrial raw materials to be sent to the Reich. In cases of doubt involving essentially economic matters, and especially in cases in which the chiefs of Civil Administration have in view the slackening of the orders of the Economic Executive Staff East having a special importance, *my decision should be obtained through the Economic Executive Staff East.*

"VII. The Reichskommissar Ostland, the Oberpresident of East Prussia and the Governor General *are requested to report to me* through the Economic Executive Staff East, Berlin W 8, Leipzigerstrasse 3, on the economic development in the areas taken over by them." [Emphasis supplied.]

Various decrees to implement the spoliation program were issued by Koerner. When the BHO was established 20 August 1941, which organization has hereinbefore been alluded to and which was the principal spoliation agency of the Reich with respect to industrial plants in occupied Russia, it was defendant Koerner who became chairman of the Verwaltungsrat of such organization, which position he held until 31 March 1943 at which time, at the behest of Hitler, he resigned such position because of his membership in the Reichstag, whereupon such position was taken over by the defendant Pleiger, as hereinafter discussed in our treatment of the case against Pleiger in this count.

The record further contains many instances demonstrating beyond reasonable doubt that the defendant actively participated in and furthered many phases of the Reich spoliation program in Russia. Such activities were many and varied. It is needless to discuss them all in this opinion. They also include the plundering and spoliation of industrial properties. The effort made by defendant to show that he did not in fact participate in the planning, formulation, or execution of the spoliation program of the Reich are far from convincing, and the argument made in his behalf that some of the territories under consideration had become a part of the Reich so as to make the Hague Conventions inapplicable with respect to the charges of spoliation is likewise untenable.

From the evidence we must and do find the defendant Koerner guilty under count six.

The specific charges in count six with respect to defendant Pleiger are to the effect that Pleiger held various policy-making positions in governmental agencies which were active in the industrial life of Germany and that in such capacities he was active in the initiation, formulation, and furtherance of the Reich program of plunder and spoliation. It is specifically asserted that he and the defendant Koerner largely influenced and controlled the Hermann Goering Works when, in the course of plunder and spoliation, such concern secured ownership and control of plants and properties in Czechoslovakia. It is further alleged that defendant Pleiger, from August 1941 to March 1943, was manager of the Berg- und Huettenwerksgesellschaft Ost m.b.H., commonly referred to as the BHO, and thereafter, until 1945, chairman of its Verwaltungsrat, Supervisory Board, "trustee" for the iron, steel, and mining industry, and the principal spoliation agency in its fields of operation. It is further asserted that after March 1943, Pleiger was both general manager and chairman of the Supervisory Board of the BHO, and it is alleged that the BHO was responsible for the exploitation of coal and iron ore mines and the draining off of raw materials from the occupied territories, and that said agency was also responsible for the transfer under sponsorships, of industrial plants to private enterprises for exploitation in the interests of Germany, and the dismantling of some Ukrainian plants and the shipment of the equipment thereof to Germany for the use of German industries. It is further alleged that the BHO removed from many plants in said occupied territories, machinery, installations, and materials, and stored and distributed such machines, installations, and materials for the benefit of the German economy, and it is alleged that the Hermann Goering Works, with the defendant Pleiger playing a leading part therein, engaged in various transactions in conjunction with the BHO involving the economic spoliation of the Soviet Union.

From the evidence it clearly appears that during the times referred to in count six, Pleiger held positions of great influence and authority affecting the industrial life of Germany and the economy of the territories occupied by Germany. A brief discussion concerning some of the most important of the positions thus held by Pleiger is requisite to a proper appraisal of the evidence introduced relative to the charges made against the defendant in this count.

It appears that when the Hermann Goering Works was founded in 1937 defendant Pleiger was appointed a Vorstand member of

such company and that from that time until the end of the war he remained a dominant figure in such organization, particularly in the Montan companies of the concern which were engaged in the iron ore and coal mining, in smelting, in iron and steel productions, and other activities. In 1941 Goering, Plenipotentiary for the Four Year Plan, named Pleiger as chairman of the Reich Association Coal, and he was also in 1941 appointed the Reich Plenipotentiary for Coal by Walter Funk, the then Minister of Economy, with the approval of Marshal Goering. It further appears that on 10 January 1942, Marshal Goering appointed Pleiger Reich Plenipotentiary for Coal for the Occupied Territories. It further appears that in August 1941, when the Reich established the Berg- und Huettenwerksgesellschaft Ost, commonly referred to as BHO, a corporation established for the announced object of exploitation of the occupied Russian territories, defendant Pleiger was given the management of said concern. It also appears that although Pleiger was not designated as a member of the Central Planning Board he received important assignments from such organization and apparently exerted considerable influence in such organization. In this con nection it is significant that on 2 October 1943 Marshal Goering, in declaring that the Central Planning Board was competent for the economy of the Occupied Eastern Territories, stated (*NID–14601, Pros. Ex. 2268*) :

> "General Director, State Councillor Paul Pleiger is appointed Plenipotentiary of the Central Planning Board for the eastern industrial economy. He is authorized to make all decisions for the full use of the industrial economy of the occupied eastern territories for the German war economy within the scope of the tasks and the decisions of the Central Planning Board."

Such decree further announces that various Reich offices are to be "at his [meaning Pleiger's] disposal for carrying out his tasks."

Goering further decreed that Sauckel, who was the Plenipotentiary General for the utilization of labor, was to cooperate closely with the Plenipotentiary for eastern industrial economy, Pleiger, and that in the event of differences of opinion between Pleiger and Sauckel, the Central Planning Board would make the decision. It is further to be noted that Albert Speer, who was chief for Armaments and War Production, and a member of the Central Planning Board within the Four Year Plan, notified Pleiger as follows (*NID–14600, Pros. Ex. 2269*) :

> "You are to exercise also my powers as Plenipotentiary for Armament Tasks in the Four Year Plan and as Inspector for

Water and Energy in the Occupied Eastern Territories, including the area of operations, insofar as I do not reserve to myself the carrying out of these tasks in the individual cases."

We will not discuss the evidence adduced by the prosecution with respect to the alleged transfer of Skoda and Bruenner Waffen Works to the Hermann Goering Works, nor evidence adduced by the prosecution with respect to the acquisition of Ferdinand Nordbahn, inasmuch as the prosecution, in its brief with respect to count six, states that it does not feel it has established Pleiger's role in these transactions. Nor will we discuss any evidence adduced by the prosecution with respect to alleged spoliation of the property and economy of the Sudetenland falling within the category of belligerently occupied territories contemplated by the Hague Convention with respect to military occupation.

We will first consider the evidence adduced with respect to the charges of spoliation allegedly committed in Czechoslovakia. The Poldihuette in Czechoslovakia was one of the world's largest refined steel producing enterprises. Control of this organization was attained by the end of 1943 by the Hermann Goering Works, by which time it had secured more than 75 percent of the shares of Poldihuette, although such Hermann Goering Works had in fact been in control of the organization since 1939. The evidence discloses that Pleiger proposed that Poldihuette take over another seized Polish enterprise, the Stalowa Wola, which until then had been under the management of a Hermann Goering Works subsidiary, Stahlwerke Braunschweig, the proposal being that in exchange Poldihuette should issue new capital shares to be given to the Hermann Goering Works. This plan apparently was carried through. Defendant Pleiger himself testified:

"The thing that I had to do was to fulfill a quota, and I wished that Poldihuette should be incorporated with the HGW (Hermann Goering Works) so that we could work together on a refined steel basis."

It appears that during the German occupation Poldihuette produced airplane motor parts for the forces of the occupant. During the period controlled by the Hermann Goering Works it further appeared that Poldihuette took over the Jewish enterprise, Lana-Rakonitzer Steinkohlen A.G., acquiring same through so-called purchase of shares from the Reich Aryanization agencies.

Another Czechoslovakian enterprise was the Vitkovice Gewerkschaft which produced over a third of all coal in Bohemia-Moravia, more than 40 percent of the pig iron made therein, and more than 30 percent of the crude steel manufactured therein. After the German occupation of the Protectorate it appears that

Goering ordered a negotiation to be conducted with the owners for these properties. It seems that Pleiger was chairman of a committee set up for Vitkovice to take over the direction of the enterprise, and he held such position from the end of 1939 until 1943. Pleiger on the stand stated that there were no acquisitions made by the Hermann Goering Works that he did not know about. That the properties thus acquired were exploited without any regard for the economy of Czechoslovakia or its inhabitants is indicated very graphically by the fact that Pleiger took millions of marks from the earnings of the Vitkovice Bergbau und Eisenhuetten Gewerkschaft and the Poldihuette and presented such to Reich Marshal Goering. Illustrative of this generosity is a letter of 5 December 1941 directed to the Reich Marshal and which stated therein in part as follows (*NID–15575, Pros. Ex. 3771*):

> "The Vitkovice Bergbau & Eisenhuetten Gewerkschaft and the Poldihuette A.G., both belonging to the Montanblock of the Hermann Goering Works have given to me, out of the profits of the business year 1941 now nearing its end, an amount of RM 3,000,000 with the directive to put it at your disposal, Mr. Reich Marshal. RM 2,400,000 came from the Vitkovice profits and RM 600,000 from the Poldihuette A.G. profits."

We will now turn to the evidence introduced with respect to the charges of spoliation in Poland. Following the occupation of Polish territory by the German forces in the autumn of 1939 a large-scale program of plunder and spoliation was inaugurated by the German authorities. The scope of such a program is revealed in a decree by Marshal Goering under date of 19 October 1939 which provided for the creation of the Main Trustee Office for the East which has heretofore been referred to in our treatment of the case of defendant Stuckart under this count. We again wish to emphasize that the obvious and announced purpose of the creation of the Main Trustee Office East was the exploitation of Polish properties for the Reich, which included "the property and real estate, plants, mobile objects, and rights taken out of Polish hands."

A short time after the German invasion of Poland the Hermann Goering Works took over the iron works and foundries of Starachowice and Stalowa Wola, the most important enterprises of that type in Poland. The evidence reveals that on 9 October 1939 defendant Pleiger held a conference with General Stud of the German High Command, the result of which was that the management of the iron works and foundries thus seized were transferred to defendant Pleiger. In the letter ordering the taking over of such management by the Stahlwerke Braunschweig, a

subsidiary of the Hermann Goering Works, it was stated (*NI–4798, Pros. Ex. 3409*):

"All property rights of the former Polish plants are not affected hereby,"

but it is to be particularly noted that in February 1940 a letter (*NI–4801, Pros. Ex. 3410*) from the Stahlwerke Braunschweig in the Starachowice plant requested the dismantling of eight lathes and five drilling machines for transfer to the Vitkovice Works, the company hereinbefore referred to as having been taken over by the Hermann Goering Works in Czechoslovakia. The request stated:

"The delivery is to be declared as steel scrap material."

At the time in question defendant Pleiger was the chairman of the Aufsichtsrat of the Stahlwerke Braunschweig, the subsidiary of the Hermann Goering Works. The looting of this Polish plant, however, did not stop with the dismantling and shipment of the machines above mentioned. The evidence discloses that competent military authorities had objected to the removal of 187 machines from the Starachowice plant, 29 of which machines had been sent to Salzgitter, the main plant of the Hermann Goering Works. Further efforts were made on the part of the Hermann Goering Works to secure more machines from Starachowice, and a final suggestion by Rheinlaender, one of the directors of the Stahlwerke Braunschweig, was that Pleiger intervene in behalf of the Hermann Goering Works to accomplish the desired purpose. It is important to note that in evidence is a communication addressed by one Rheinlaender to the Vitkovice Works, which, as hereinbefore stated, was a subsidiary of the Hermann Goering Works, which shows that machinery from Starachowice was in fact removed to Braunschweig on orders of defendant Pleiger. It appears that in a letter addressed by Raabe of the Hermann Goering Works to the military authorities, the question of stripping other Polish plants was discussed, and as a result thereof permission was given the Hermann Goering Works to remove machinery from Budzyn in Poland and to send same to Salzgitter, Starachowice, and Braunschweig.

Defendant Pleiger's active role in this program of plunder and spoliation is further proved by evidence of one of the defendant's witnesses, Raabe, who said that as Vorstand member of the Hermann Goering Works he was requested by Pleiger to take over the directorship of the spoliated Polish plants. He testified that much machinery was, in fact, sent to Salzgitter. It appears elsewhere in the record that it was claimed in behalf of Pleiger that all machines taken to Salzgitter were taken there for repairs, but

that such machines were never returned. He asserted further that in discussing with Pleiger the fact that military authorities objected to removal of such machinery Pleiger requested him to adjust the matter with the military authorities.

The extent of Pleiger's participation in the spoliation program in Poland is revealed in a file memorandum of the Hermann Goering Works dated 21 September 1942 which states that:

> "By order of Mr. Staatsrat Pleiger the productions of the HG plants are to be transferred to plants of the Konzern located in the Reich. For this purpose machinery and installations, raw materials as well as store goods, tools, and contrivances amounting to approximately 5,000 truckloads were removed from the plants."

We find further spoliation activities in Poland by Pleiger in behalf of the Hermann Goering Works in connection with the coal mines in Upper Silesia. It appears from the evidence that the spoliation agency HTO, to which reference has already been made, on 23 July 1940, gave to the Hermann Goering Works a so-called "trusteeship" of all peat coal mines in Upper Silesia. Subsequently, certain of these coal enterprises were by the Reich government transferred to a subsidiary of the Hermann Goering Works.

One Dewall, a defense witness,* stated that he had been manager of the Polish coal mines and that he had been appointed as such by the defendant Pleiger in 1940. His testimony showed the active interest of Pleiger in the development of the mines, and that all construction in such seized properties was done only through "special permission" of Pleiger. This witness gave the highly significant testimony that there was taken from such coal mines in 1940, 62,000 tons; 1941, 62,400 tons; 1942, 69,300 tons; 1943, 74,800 tons; and in 1944, 77,900 tons, and that of these amounts two-thirds went to Germany. Pleiger's own testimony was to the effect that he was active in connection with the coal enterprises.

It is repeatedly contended by the defense that the plants and properties in question were not operated for the German economy but in fact for the economy of the occupied territories and their inhabitants. This explanation, however, is very difficult to accept in view of the wholesale stripping of the plants, coupled with the fact that during such processes Pleiger with others was trying to acquire ownership of the plants themselves, all of which indicates that the general intent and purpose of the program was in

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* Complete testimony of Hans Werner *von Dewall is recorded in the mimeographed transcript, 6 October 1948, pages 24848–24883.

fact one of spoliation. It must not be forgotten that the HTO was created for the announced purpose of exploiting the economy of the occupied territories for the benefit of the German economy. That the annexation of these plants was conducted in accordance with the program thus announced and implemented by the Reich government, there can be little doubt. In this connection and as bearing upon the dominating intention and motives of the defendant Pleiger and others involved we may call attention to the communication directed by Raabe on 22 July 1940, to Kehrl, the Generalreferent with the Reich Ministry for Economics. Mr. Raabe states in part (*NID–15350, Pros. Ex. 3778*):

> "We agreed with Mr. Pleiger on the following point: to take on lease first of all, those three works and this through the Stahlwerke Braunschweig in order to facilitate a later transfer."

The three works referred to were Starachowice, Stalowa Wola, and Ostrowiec. The communication later states:

> "For us (Stahlwerke Braunschweig) is only of importance that we keep those works in our hands up to the transfer of ownership, because it is clear that the works up to the abovementioned moment are only to be directed through *us*, for the technical as well as also the other matters can only then be carried through exclusively, provided we know that we shall get the ownership in the future. If, for instance, a new trustee will be appointed or another firm will take those works on lease, the works would be developed into an entirely different direction and with ideas different from those that we want to apply later when owners of these works, in other words, the uniform development would be broken."

It is significant also that as late as 1943 Pleiger, in behalf of the Hermann Goering Works, was apparently trying to get Stalowa Wola for Poldihuette. The fact that these particular acquisitions did not come to fruition is not important. They do disclose the existence of the general plan and purpose. The general plan and purpose was one of spoliation completely out of harmony with the professions made during the course of the trial by defendant and his witnesses that they were free of illegal motives in the actions which they took.

The prosecution also introduced some evidence to prove Pleiger's participation in spoliation in Lorraine in connection with the iron producing and mining industries. It appears that the Reich government, upon occupation of eastern France, decided that the Lorraine industries should be administered under con-

tracts between the Reich and German individuals who were for the purpose designated as "trustees," which contract provided that upon return of peace such trustees should have opportunity to purchase the properties thus held by them as trustees. It developed that the Hermann Goering Works, through Pleiger, secured a so-called trusteeship over the DeWendel plants in Lorraine. For the purpose of such trusteeship the Hermann Goering Works created a subsidiary company called the Huettenverwaltung Westmark. It appears from testimony of defense witnesses that Pleiger was manager of this subsidiary company. The claim that machinery was taken from the DeWendel plants for transfer to plants in occupied Russian territory is not, in the opinion of the Tribunal, adequately proved. There does appear to have been some correspondence concerning such matter, but there is not sufficient and satisfactory evidence to indicate that such transfers were in fact made. The question here is whether the taking over of such DeWendel plant under the so-called trusteeship contract constitutes spoliation within the provisions of the Hague Convention. There apparently was not an abandonment of the plant either so as to require its taking over by the Reich government.

It is significant that the Vichy government, although in many ways collaborating with the Reich, objected strenuously to the taking over of plants in occupied France, including the DeWendel. It was pointed out in said protest made by the French Government that such plants had been taken over under an arrangement that was tantamount "to a partial execution of a program of dispossession of the companies owning the plants."

It is the position of the Tribunal that this domination of the plants with provision for ultimate acquisition under a trustee arrangement constitutes spoliation to such an extent as to amount to a violation of the Hague Conventions. To this same effect was the judgment in United States *vs.* Flick and United States *vs.* Farben, and others.

We will now take up the charges of spoliation against Pleiger as made with respect to Russia. Reference is here again made to the Goering decree of 27 July 1941, where he set forth the objectives and organizations for the exploitation of the eastern occupied territories and where he indicated approval of the Reich Ministry of Economics as follows (*NI–3777, Pros. Ex. 1976*):

> "4. Furthermore, in reply to the suggestion of the Reich Minister of Economics, I agree that the following monopoly companies be created in accordance with the submitted company charters and commissioned by executive authorities—
>
> "*a.* The Ostland Berg- und Huettenwerksgesellschaft m.b.H. with the task of managing, in the interest of the German war

economy, the Russian coal and iron industry as well as the mining of iron ore."

The Ostland Berg- und Huettenswerkgesellschaft thus referred to was thereafter, on 20 August 1941, organized—

"* * * for the purpose of managing in the interests of the German war economy the Russian coal and iron industry, as well as the mining of iron ore."

This concern thus organized is commonly known and referred to as the BHO. It appears that defendant Pleiger was, on 24 August 1941, invested with the management of the BHO, and at said time a directive by Reichert of the economy group of the iron producing industry stated that the company BHO,

"* * * will operate according to an order of the Plenipotentiary for the Four Year Plan."

One defense witness, Carlowitz, testified that this assignment for Pleiger as manager of the BHO was given to him by Goering as the result of a conference held between Goering and Pleiger. On 3 November defendant Pleiger announced and issued over his signature a set of "principles" for the management of the plants thus sponsored, and it is significant that among other things it was stated there (*NI–3689, Pros. Ex. 1992*):

"The sponsor must take all measures which are necessary to make the sponsored plant useful for the Reich defense in the shortest possible time and the most effective possible manner."

This Pleiger-issued order also stated:

"The BHO will exert its influence in the final settlement of the ownership of the industrial property in the occupied [eastern] territories in such manner as to insure that the interests of the sponsor will be taken into consideration to a degree corresponding to the extent of its cooperation in the development of the economy of the region."

It would seem to be too clear for argument that the announced purpose for which BHO was created, and the "principles" thus enunciated by its manager Pleiger conclusively show that the purpose and the program of the BHO was predominately one of exploitation and spoliation of the territories in which it was created to operate.

It appears that BHO concentrated its efforts largely upon the manganese ore mines in Nikopol, the iron mines in Krivoi Rog, and the coal and ore mining in the Donetz Basin. This is indicated by the minutes of the meeting of the Verwaltungsrat of the

BHO held 31 March 1943 (*NI–5261, Pros. Ex. 1994*) in Berlin, at which meeting General Director Pleiger was present. It is noteworthy that defendant Koerner, as chairman of the Verwaltungsrat, presided at this meeting. At this meeting, however, he resigned such chairmanship because, as was indicated, he was also a member of the Reichstag, and the Fuehrer, for that reason, apparently did not wish him to hold the chairmanship of the Verwaltungsrat of the BHO at the same time. Upon his resignation as chairman of the Verwaltungsrat at this meeting the defendant Pleiger was made the new chairman of the Verwaltungsrat, and Pleiger at such meeting took over the chairmanship of the meeting and made an extensive report with respect to the activities of the BHO in the iron mining industry in the occupied Russian territory.

He reported that 110,000 tons of manganese had been mined in 1942, which exceeded that which had formerly been mined by the Russians. He estimated at such meeting that the amount could be doubled in 1943 which would be—"* * * sufficient to satisfy the entire European requirements."

An earlier report of the BHO (*NI–4332, Pros. Ex. 1993*) indicates that the brown coal deposits in the western Ukraine were also being exploited, "* * * in an increased degree from the summer of 1942 onwards."

Such report also states that—

> "* * * the Wehrmacht requires that coal deposits be exploited as rapidly and extensively as possible. This demand will be complied with. The necessary steps have been taken."

This same report also disclosed the real motivating consideration for the development of the manganese ore mining industry in the occupied Russian territory as follows:

> "The development of the manganese ore mining industry was taken in hand as being particularly urgent,"

and the report later resumes as follows:

> "The resumption of operations in the iron mining industry was temporarily suspended in view of supplying with manganese ores those industries belonging to Germany and her allies which are important for the conduct of the war."

This same report gives some impressive figures for 1942 of BHO's production in the occupied territory.

But exploitation of the Russian iron ore mining industry was not the only activity of the BHO in Russia. On 17 June 1943 defendant Pleiger sent a report (*NG–2695, Pros. Ex. 1996*) to all offices of the BHO calling attention to the fact that an inspection

of plants of the BHO in the Ukraine had shown that a number of installations could not be further operated because "they are too destroyed." He then states that the installation parts of such works are free for use within a sphere of the BHO "or in the Reich." The latter then continues:

"Furthermore, care has to be taken that the parts which are still usable won't be brought into the Reich as salvage, but will be used for the accelerated construction of the iron works, which are important for the conduct of the war. For that purpose, I order that the gentlemen mentioned below will inform themselves through thorough inspections of the shut-down iron works and plants which installations can be moved to the Reich for the speeding up of the construction of the H.G.W.

"Dr. Rheinlaender
"Direktor Schiegries I
"Direktor Schiegries II HGW.-Salzgitter, iron works Braunschweig
"Direktor Eisfeld A.G. fuer Bergbau und Huettenbedarf

"I instruct all offices of the BHO to support the above-mentioned gentlemen in carrying out their tasks in every respect. The execution of dismantling the individual installations and their transfer to the Reich are to be arranged on the spot as far as possible. The release of the individual installations, through the BHO, is to be left to me.

Paul Pleiger"

That vast amounts of equipment were in fact taken from plants in occupied Russia and sent to the Reich is conclusively proven by both documentary evidence adduced by the prosecution and by admissions of the defense witnesses as well. It is also clear that Pleiger displayed considerable energy in the execution of such a program of spoliation. He utterly disregarded the limitations of the Hague Conventions in this respect.

It has been pointed out that the property seized in Russia, both movable and immovable, was, to a large extent, state-owned, and it has been urged that, as such, it is subject to seizure and utilization without regard to whether or not its use was necessary for military operations by the occupying army, and that under conditions of modern total warfare, all produce and material, raw or processed, including those of the soil, mines, forests, and oil fields, together with the plants which process them, are essential to military operations. This claim is far too broad.

The provisions of Articles 53 and 55 of the Hague Convention, which have been heretofore set forth, place limitations upon the

occupant's right of seizure and utilization, with respect to movable and immovable state-owned property. Article 55, it will be noted, contains limitations with respect to state-owned properties, such as public buildings, real estate, forests, and agricultural estates. The provision states that the occupant "must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct." This right obviously does not include the privilege to commit waste or strip off the property involved, nor is it conceivable that the administrator or usufructuary may with impunity so use the property as to ruin or destroy the economy of the occupied territories, or to deprive its inhabitants of food, clothing, coal, oil, iron, and steel for their normal needs.

It seems clear from the evidence that the state-owned properties which were here seized, were seized and used without regard to the rules of usufructuary, as contemplated by that term, in said Article 53.

We find defendant Pleiger guilty under count six.

KEHRL

In addition to the general charges contained in count six against defendant Kehrl, a number of specific charges are also made against him, among them the following: He is charged with having been, together with defendant Rasche, active in the plunder of public and private property in Czechoslovakia. It is asserted that by virtue of the powers delegated by Reich Minister of Economics Funk, Kehrl directed and reviewed German acquisitions of industrial and financial properties in the Sudetenland and the "Protectorate" (Bohemia-Moravia) and that he and Rasche were specifically authorized by Goering to acquire and regroup major segments of Czech industry, so that they could be coordinated effectively with the German war effort. It is asserted that defendants Kehrl and Rasche drafted and executed plans for the seizure of control of important Czech coal, steel, and armament properties. It is alleged that the defendant Kehrl supervised the acquisition, through Rasche, of many Czech properties, and it is alleged that the defendants Kehrle and Rasche were instrumental in securing for the Hermann Goering Works the ownership and control of plants and properties forming a foundation of the industrial life of Czechoslovakia. It is further asserted that Kehrl played an active and important role in the transfer and control of major financial institutions in Czecholovakia to Germans, and that immediately after the occupation of Bohemia and Moravia, defendant Rasche obtained defendant Kehrle's approval for taking over the Boehmische Escompte Bank, herein referred to as the

BEB, all of which was carried out as is hereinafter set forth in our treatment of the charges of spoliation against Rasche. It is also specifically asserted that defendant Kehrl drafted and participated in the execution of the so-called "Kehrl Plan" for the exploitation of the textile industry in the occupied western territories, and otherwise participated as Generalreferent in the Reich Ministry of Economics in the programs for economic exploitation in the occupied territories. It is asserted that under the Kehrl Plan complete control was obtained by Germans of the existing textile production in the occupied regions of Belgium and northern France, and that enormous quantities of raw materials and finished products were transferred from the occupied western territories to Germany. It is alleged that the defendant Kehrl was chairman of the Verwaltungsrat of Ostfaser G.m.b.H. and its subsidiary companies, which were established as "trustees" for the textile industries in the Soviet Union and other occupied eastern territories. It is asserted that the activities of these "trustees," directed and supervised by Kehrl, included the taking over and operation of hundreds of textile plants, the seizure of enormous quantities of raw materials and the exportation to the Reich of seized materials and plant production. It is also alleged that the defendant Kehrl, together with defendants Schwerin von Krosigk, Darré, Lammers, Koerner, Pleiger and Stuckart, took part in numerous meetings, at which exploitation policies were discussed and plans were made.

Immediately following the invasion of Bohemia-Moravia by the Germans, and for a period of years thereafter, the defendant Kehrl was possessed of extensive powers and authority in the execution of the Reich plan to work the Czechoslovakian industry into the structure of German war production, and exploiting it for the German war effort. The defendant Kehrl, in testifying in his own behalf before this Tribunal, stated as follows (*Tr. p. 15565*):

> "A. I had been in the Ministry just 6 weeks when Austria was annexed, and a circular letter from the Minister of the Interior came to the Ministry of Economics that an office would be set up in Vienna under Keppler, a Ministry of the Reich Commissioner, to which every major industry would send a representative. State Secretary Brinckmann looked me up at that time, primarily because I knew Keppler well from our previous work together, and also because he had in the Ministry of Economics no economist available with an extensive knowledge. I went to Austria and was active for a few weeks on Keppler's staff. Then I became liaison man between the Reich Ministry of Economics and the Reich Commissioner Buerckel,

and on commission from the Minister of Economics I was active in the reincorporation of Austria into the Reich. This activity took about 3 days out of the week in Berlin and lasted until roughly October 1938. When the Sudetengau was incorporated into the Reich I was assigned a similar task for it, *and when the Protectorate was set up I received similar tasks for it, since the problems to be solved were all very similar. Thus, from that first accidental assignment the others developed more or less automatically.*" [Emphasis supplied.]

Attention is here directed to a letter dated 30 September 1939, written by defendant to Himmler, in which he stated as follows (*NID–14621, Pros. Ex. 2005*) :

"I was in charge from 15 March of this year to July, as representative of the Plenipotentiary for the Four Year Plan and of the Reich Economics Minister, and also as Economic Delegate of the Reich Protector, of the initiation and execution of the economic reintegration of the Protectorate, and I now continue this job, after I organized a department of economy attached to the Reich Protector, within the Reich Economics Ministry.

"In view of the impression which I gained during this my activity, and particularly on my last visit to Prague, I consider myself under the obligation to ask you for an opportunity to report to you about the political situation there, as I see it, particularly since I am convinced that my report to you might be of value to you in your decisions regarding the handling of police power in the Protectorate."

It appears that the defendant held the positions of responsibility and authority referred to under the designation of a Generalreferent for special tasks in the Reich Ministry of Economics. The defense witness Koester, a former assistant of Kehrl, stated in the course of testifying before this Tribunal that Kehrl's tasks in Bohemia-Moravia were "to effect a smooth transition of Bohemian-Moravian economy * * *." In his own testimony Kehrl admitted that all questions relating to German purchases of Czechoslovakian enterprises were subject to decision by him. He further admitted that it was provided in a decree of the Reich Ministry of Economics that Kehrl was to be consulted in making all decisions relative to such purchases.

The evidence clearly establishes that the defendant Kehrl, as such Referent for special tasks in the Reich Ministry of Economics, took part in, and to a considerable extent directed, the acquisition of important banking interests and industrial enterprises in Czechoslovakia, largely for the benefit of the German economy. It also appears from the evidence that he participated

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in the initiation and carrying out of the Reich program of Aryanization in Czechoslovakia. With respect to the whole economic program of the Reich in Bohemia-Moravia during the period in question, in the objectives sought and the manner of carrying out the program to obtain such objectives, we allude to the official report of the Czech Government, as made to the International Military Tribunal, which report is also introduced in evidence in this case. We quote the following excerpts from such evidence (*998–PS, Pros. Ex. 3065*):

"The German troops who invaded Prague brought with them a German staff of economic experts, that is, of experts in economic looting.

* * * * * * *

"The Reich German Commissioner of the Czechoslovak National Bank stopped all payments of monies abroad and seized all the gold reserves and foreign bills in the Protectorate. Thus the Germans took 23,000 kilogrammes of gold to a nominal value of 737,000 million crowns (£5.265.000) by transferring the gold deposited in the Bank of the International Settlement to the Reich Bank.

"(2) Economic Germanization.

* * * * * * *

"After the invasion German managers, supervisors and foremen replaced the representatives of the Czechoslovak Republic in state-owned plants.

"Germanization of private estates began, of course, with the catchword 'Aryanization.'

* * * * * * *

"Czech peasants were offered compensation for their estates, but inadequate prices.

* * * * * * *

"The looting of property and wealth was followed by the pillaging of products of the soil. Heavy fines and often the death penalty were imposed on Czech peasants for intentionally disregarding the orders about production, delivery and rationing.

"B. Expropriation of Banks and Holdings.

* * * * * * *

"(b) After Invasion of March 15th, 1939.

"After the invasion several Czechoslovak banks in Bohemia became, by means of the Aryanization, the property of the Bank of Dresden; the German bank took over, among others, the Union Bank of Bohemia. In this way all financial interests

which these banks had in Czech industry as well as their entire share-capital, fell into German hands.

"Hence started the penetration of German bank capital into the Czech banks, their expropriation and incorporation into the German bank system. The 'Dresdner Bank' (being the actual establishment for handling the funds of the National Socialist Party) and the 'Deutsche Bank' were officially entrusted with the task of expropriating the funds belonging to the Czechoslovak banking concerns.

"By diverse 'transactions', by gaining influence through the Sudeten branch banks upon the Prague Headquarters of the respective banks, by reducing the share capital and then increasing it with German help, by acquisition of industrial holdings and thus gaining influence upon the controlling banks, by depriving banks of their industrial interest, etc., the two Berlin banks gained complete control over the banks of the Protectorate. Gestapo terror helped them.

"The control of the Czechoslovak banks meant actually the control over practically the whole industry directed by the Dresdner Bank and Deutsche Bank on the one hand, and by the big German industrial concerns on the other hand.

* * * * * * *

"(b) Armament factories.

"The Dresdner Bank acquired the most important armament factories of Czechoslovakia, that is, the Skoda works in Pilsen and the Czechoslovak Zbrojovka in Brno. The private shareholders were forced to surrender their shares far below their actual value; the bank paid for these shares with bank notes which had been withdrawn from circulation or which the Germans had confiscated in the districts ceded by the Munich Agreement.

"(c) Goering Concern.

"The German domination over the Czechoslovak banks and, therefore, over the industry through the big Berlin banks, was accomplished through the gigantic Hermann Goering concern which, one by one, seized the greatest Czechoslovak industries at the smallest financial cost, that is to say by the chief pretext of Aryanization, by pressure from the Reich, by financial 'measures' and by the threat of Gestapo and concentration camps.

"Finally all big industrial holdings, works, and plants of the armament, coal and iron industry fell into German hands. The great chemical industry was absorbed by the German concern 'I. G. Farben Industrie.'

* * * * * * *

"(b) After the Invasion of March 15th, 1939.

"(aa) Assault on the Currency.

"After the invasion the Nazis immediately introduced a fixed rate of 10 crowns to one mark, thus lowering it to the disadvantage of the Czech crown. The invading German Army and other Germans could so plunder the rich Czech reserves at low prices still current in the Protectorate.

In addition, all stocks of precious metals, diamonds, foreign currencies, had to be exchanged for the German paper mark in the entire area of the Protectorate.

"(*bb*) Clearing 'Agreement.'

"A big financial looting started with the financial clearing agreement negotiated between the Czech National Bank and the Reich Bank. This simple measure enabled the Germans to import goods freely from the Protectorate without burdening the German balance of payment with an equivalent. The German importer paid the Reich Bank in marks for the goods which he had bought and the Reich Bank entered the equivalent in crowns to the credit of the Czech National Bank on the clearing account. The National Bank in Prague could do nothing but enter these sums as assets, they appeared in its weekly statements under the heading 'Other assets,' although they were doubtful from the beginning and worthless at the end."

The foregoing indicates the methods employed to effect "a smooth transition of Bohemian-Moravian economy * * *" the responsibility for the execution of which was largely in the hands of the defendant Kehrl. In view of the great authority and responsibility vested in him in this program and his active participation therein as indicated by the evidence, he can find no refuge behind the plea of being ignorant of the nature of the methods employed.

The various items of evidence hereinafter referred to in the opinion of the Tribunal are but corroborative of the evidence hereinbefore referred to with respect to Kehrl and his participation in spoliation in Czechoslovakia.

We will, for reasons hereinbefore in this judgment stated, refrain from discussing the charges made against defendant, with respect to property in the Sudetenland. We will first consider here the role played by Kehrl in Czechoslovakian banking enterprises being acquired by German interests. It appears that from the beginning Kehrl played a vital directing role in these acquisitions.

It appears that on 21 March 1939, but a few days after the appearance of the Reich military invasion forces in Prague, a conference was held in Prague between German banks, with a view to determining the allocation of Czech banks among the

German banks. It is stated in the report of such conference, the report being made by Koester, Kehrl's assistant, who apparently presided over the meeting, that the meeting was held *"to draw up a proposal suitable to be submitted to President Kehrl to enable him to arrive at a final decision."* [Emphasis supplied.]

Documentary evidence introduced takes into consideration also that defendant Kehrl passed upon and approved appointments to the supervisory board of the BEB after it had been acquired by the Dresdner Bank. It further appears that he also approved appointments to the supervisory boards of the various concerns in which participations had been acquired through the medium of the BEB. From the files of the BEB, we have in evidence a report of a conference attended by defendant Kehrl, which report is dated 13 April 1939. Such conference report is here quoted in full, as it indicates beyond question that defendant Kehrl played an extremely active and supervisory role in the position which he held as Referent for Special Tasks of the Economics Ministry. Such report reads as follows:

"Prague 13 April 1939

Conference with President Kehrl.

"1. *Bebca Verwaltungsrat*—Mr. Kehrl agrees with the list of Verwaltungsrat members presented to him. Mr. von Hinke should, for the time being, not be asked by us to accept a mandate.

"Dr. Hans Ringhoffer should remain in the National Bank meanwhile, while his brother Franz should join the Verwaltungsrat of Bebca to keep this position open for his brother.

"2. *Bebca–Direction*—It is Mr. Kehrl's wish that Dr. Fousek immediately resign his position on the executive board of directors.

"3. *Bebca–Presidium*—We informed Mr. Kehrl about our ideas to have Dr. Rasche elected chairman and Dr. Hummelberger and Hoedel vice chairmen. Mr. Kehrl said that he would consider this plan, but it didn't seem to him too good a plan, because the influence of DB [Deutsche Bank] on Bebca would be stressed too much.

"4. *Poldi–Syndicate*—Mr. Kehrl agrees with the list of persons presented to him. The representatives of DB have to be told that it is only a temporary arrangement for about a year.

"President Kehrl agrees with keeping Baron Kubinsky in the Verwaltungsrat, for the time being.

"Mr. Kehrl wants the Bebca to confirm in writing to him (Kehrl) that upon request it is prepared to sell its shares, which are part of the syndicate agreement, to the German industrial group. Mr. von Luedinghausen pointed out that this was

possible only if the price would correspond to the one previously paid by DB."

The foregoing, and much other evidence in the record, some of which will hereinafter be referred to, shows clearly that Mr. Kehrl knew of and had a directing hand in the course of measures employed by the Reich in the acquisition of BEB by German interests. Such evidence is in line with, and corroborative of, the statements made in the Czech Commission report for the IMT, and which is in evidence in this case.

We need not here dwell further upon the acquisition of control of the banking interests, such as BEB in Bohemia and Moravia. The discussion and treatment of defendant Rasche's part therein, as hereinafter contained, shows the methods and results of this acquisition program. Evidence here adduced with respect to the charges against Kehrl under this count, as hereinbefore stated, has shown his directing hand and voice therein. We have but to allude to part of his cross-examination before this Tribunal under date of 19 August 1948. We quote therefrom (*Tr. pp. 16927–16928*):

"Q. Weren't the proposals of all the big German banks for allocation of a sphere of interest in the Bohemian-Moravian Protectorate transmitted to you for final decision?

"A. Well, that is putting it rather generally. The sphere of interest in the banking field, you mean?

"Q. Yes, the sphere of interest of banks in the banking field?

"A. Yes, I testified to that effect.

"Q. Didn't you also review the appointments to the boards of the Germanized banks and decide then whether the German banks were sufficiently represented?

"A. Well, that is putting it rather generally.

"Q. All right, I will put it more specifically.

"A. I beg your pardon?

"Q. I will put it more specifically. In the case of BEB didn't you argue with the Dresdner Bank they were not putting enough Germans into the management?

"A. I can't remember, but it may be."

That defendant Kehrl had a very decisive voice in the matter of the acquisition of banks in Bohemia-Moravia after the invasion is admitted by him in the course of his testimony before this Tribunal on 13 August 1948, when he stated (*Tr. p. 15901*):

"Immediately after my arrival in Prague I went to the Dresdner Bank, the Deutsche Bank, the BEBCA and BUB and the Kreditanstalt der Deutschen [that is, all German banks in

Bohemia-Moravia], and I forbade them from purchasing any Czech shares without my permission."

We will not consider the participation of Kehrl in the acquisition of Poldihuette, Erste Bruenner, Skoda, Bruenner Waffen and Vitkovice, extremely important industrial establishments in Bohemia-Moravia, and concerning the acquisition of which we hereinafter dwell at some length in discussing charges of spoliation against Rasche. In this connection, we refer to a communication sent by defendant Rasche to Gritzbach, chief of the staff office of the Reich Marshal Goering, dated 23 December 1943, enclosing a file note, wherein he discusses the Poldihuette matter and in the course of which discussion he states (*NI–2028, Pros. Ex. 3103*):

"(As you know, during the course of developments President Kehrl and I were given further special authority by the Reich Marshal for the acquisition and regrouping of such industrial affairs, and I think we were very successful in executing this order on the basis of authority he accorded to us). As you know, the Skoda shares also were the outcome of these negotiations in addition to the ones named above; also the Bruenner Waffen shares."

Under date of 3 July 1939, it seems that Walther Funk, the Reich Minister of Economics, wrote to the Dresdner Bank relative to acquiring Poldihuette and Erste Bruenner shares, stating in the course of such letter (*NID–13667, Pros. Ex. 3123*):

"You have declared your agreement to receive the following mission from the German Reich, that is, to carry out the transaction which has been defined by this agreement and the syndicate contracts."

He further stated:

"As far as I have not nominated any other gentleman of my ministry it shall suffice for your clearance to carry out the instructions of my Generalreferent Kehrl."

It appears further from the evidence that the Poldihuette and Erste Bruenner shares acquired and held by the Dresdner Bank under the trusteeship for the Reich, were subsequently transferred to the Hermann Goering Works. In connection with this acquisition, attention is called to contents of a report of the Reich Finance Ministry, dated 9 January 1940, which states that Kehrl had offered various Czechoslovakian acquisitions, including Poldihuette, Erste Bruenner shares, to the Hermann Goering Works. We quote the following from such report (*NID–15639, Pros. Ex. C–184*):

"1. Upon orders by the Plenipotentiary for the Four Year Plan the aforementioned investments were bought—for the time being, to be held in trust for the account of whoever is concerned—by the R.W.i.M. (Generalreferent Hans Kehrl) partly through Dresdner Bank and partly through Kehrl and Bankdirektor Dr. Rasche personally. According to the R.W.i.M. the purchases were made for ethnical, economic, and especially military-political reasons."

In our discussion of the charges against Rasche, the acquisition of Skoda and Bruenner Waffen shares is also discussed. In the course of an interrogation on 18 October 1946, which is in evidence in this case, Kehrl stated with respect to said matter (*NID–14584, Pros. Ex. 3108*) :

"When I was first sent to Prague, as I told you before, Funk told me that Goering had ordered that the majority or the total holdings—he wasn't very definite in expressing his detailed views—of the Skodawerke and its daughter companies should be procured for the Reich at his disposal and that I, when coming to Prague, should see to it how it could best be managed * * *."

And he stated further:

"I talked with the Czech Finance Minister and told him about Goering and about the wish of Goering, and he told me that the government had sold out to the Zivno, and that there was no object to acquire that part from the Zivno Bank, but that the Czech Government would be thankful for not interfering in all of the other interests or the part interests in these companies."

He then indicated that the part sold to the Zivno Bank was acquired and held at the disposal of Goering, and he stated further:

"Conversations with the Zivno Bank were made on behalf of the government by Dr. Rasche."

It appears from the evidence that the key to the financial control of Skoda was through control of Bruenner Waffen. It appears in the memorandum of the OKW, issued within 2 weeks after the occupation of Prague, that Kehrl was endeavoring to purchase shares of the Bruenner-Waffen through the Dresdner Bank, and it was indicated that the negotiations were to be kept strictly confidential, and it further appears that Kehrl and the Dresdner Bank were successful in acquiring 130,000 shares of Bruenner Waffen by the end of March 1939. Subsequently, that is, in April

1939, it appears that defendants Kehrl and Rasche had secured syndicate agreements assuring them control of Bruenner-Waffen and Skoda. Such so-called syndicate agreements gave extensive powers to both Kehrl and Rasche, as for instance, the right to appoint important key personnel. There is ample credible evidence in the record to satisfy beyond reasonable doubt that such acquisitions were accomplished in no small measure through coercive measures. From Kehrl's interrogation of 18 October 1946, hereinbefore referred to, it is indicated quite clearly that the holders of the invaded shares did not have much choice but to sell.

Relative to this matter, and bearing also upon transactions hereinbefore discussed, and which will be hereinafter dealt with in the course of our treatment of the charges against Kehrl, we call attention to the testimony of Jan Dvoracek, a former official of the Zivno Bank in Prague. By reason of his position, his experiences, and his observations, he was able to give competent and credible evidence relative to the economic progress of the Reich in Czechoslovakia, following the military invasion on 15 March 1939. It is significant that defendant Kehrl himself has quite unreservedly approved of said Dvoracek, for in the course of his examination before this Tribunal on 13 August 1948, Kehrl said with respect to Dvoracek (*Tr. p. 15893*)—

> "I have already said that Dvoracek, as a leading director of the Zivno Bank, played an important part in economic life. At that time I had very great respect for him, and I still have * * *. The witness, under very great prosecution pressure, and, unfortunately, pressure from my own defense counsel too, at no time let himself be led away into saying anything that was untrue, although he was in Nuernberg under somewhat unfavorable conditions."

We will now quote from the cross-examination of said Dvoracek, on 11 June 1948 (*Tr. pp. 8487–8488*) :

> "Q. Did Mr. Kehrl in any of these conferences use duress, or threaten you, or make any attempt to induce you in any way to do anything you did not want to do?
>
> "A. I can answer that question with yes. Mr. Kehrl did have us do various things which we did not want to do, and which we would never have done without his suggestion. It was not necessary for Mr. Kehrl to threaten us personally. We were quite aware of who Mr. Kehrl was, and Mr. Kehrl never made any secret of it. For example, when, immediately after 15 March, he came to Prague and said that he had to take over armament concerns for Goering, we realized what was going

on; in our position such suggestions were orders of the Reich authorities, the Reich government, and all the power of the Third Reich.

"Q. Witness, you said that after 15 March Kehrl came to Prague and said that he came on behalf of Goering to take over the armament concerns?

"A. Yes.

"Q. You mean Skoda and Bruenner-Waffen?

"A. Yes.

"Q. Did Mr. Kehrl not always try to fulfill any wishes that you presented to him?

"A. Doctor, Mr. Kehrl tried to carry out the orders of Field Marshal Goering in such a way that these orders were complied with in every way. We tried to manage to keep the Czech personnel in charge; we were forced to a transaction we would never have gone into independently. When I say 'we' I am speaking of the whole Czech group of stockholders, including the Finance Ministry.

"Q. You are speaking of Skoda and Bruenner-Waffen?

"A. Yes."

We must now touch briefly upon the evidence bearing upon the claim that Kehrl also took part in measures taken to acquire the Vitkovice enterprise in Czechoslovakia, hereinafter also mentioned in connection with our consideration of the charges in evidence with respect to Rasche under this count. The evidence clearly shows that Kehrl had been authorized to acquire control of Vitkovice and that on 23 March 1939 there was sent from his office a letter of authorization to defendant Rasche, stating in part (*NID–13407, Pros. Ex. 3140*):

"In reference to the decree of the Reich Minister of Economics, dated 28 February 1939, authorizing me, in agreement with the Plenipotentiary for the Four Year Plan, Minister President, General Field Marshal Goering, concerning the iron works, Vitkovice, I hereby authorize you, together with Dr. Jaroslav Preiss, President of Zivnostenska Bank, Prague, to conduct negotiations with the Rothschild family * * *."

The holdings of the Rothschilds apparently were necessary to a control of Vitkovice plant. As stated hereinafter in connection with Rasche's role in this transaction, during the negotiations Louis Rothschild was in custody of the Gestapo in Vienna. It was rather significant that, when asked concerning these negotiations, particularly as to whether the release of Louis Rothschild was not a condition imposed by Eugen Rothschild before he would sign over his interests, defendant Kehrl stated—"I couldn't say. I

didn't negotiate with Rothschild." It does appear from the evidence, however, that it was through Kehrl's office that on 14 April 1939, authorization was given Rasche to see Louis Rothschild in Vienna, relative to Vitkovice, and it was Kehrl's office which, on 13 April 1939, wrote the State Police Headquarters in Vienna, requesting that an opportunity be given defendant Rasche to speak to Louis Rothschild, such letter explaining (*NID–13790, Pros. Ex. 3143*):

"I have commissioned Dr. Rasche with the negotiations concerning the Vitkovice iron plants."

In this connection, evidence was introduced in this case which definitely shows that one Karl von Lewinski, on 25 April 1939, directed a letter (*NID–15550, Pros. Ex. 3820*) to Dr. Bretsch, the so-called "trustee for the Rothschild property" in the Reich Ministry of Economy, wherein he stated in part, relative to the negotiations going on for the sale of the Rothschild holdings, said Lewinski being the representative of the Rothschild group:

"In order to expedite the release of the sequestered securities held by Kuhn Loeb, New York, Baron Eugen Rothschild is prepared to send the following telegram to his legal representative in New York, provided you approve of it as a satisfactory guarantee that the conditions will be met:

"Please inform Kuhn Loeb that I agreed to withdraw attachments and request them to cable and confirm by letter to S.M. as follows: 'At request Eugen Rothschild we agree to hold at your disposal all balances previously attached by him and also that the following securities (list follows) on a condition firstly that Louis Rothschild shall have freely left Germany over Swiss or French frontier on or before May 4th and secondly that you shall not remove the securities belonging to Eugen Rothschild from our custody without his consent and to place at his disposal in dollars the income collected thereon to date.' "

In his testimony before this Tribunal, Kehrl admitted that Louis Rothschild had been released from custody of the Gestapo in Vienna, stating:

"If I remember right it was shortly after negotiations began."

That Kehrl had detailed and firsthand knowledge of the negotiations with respect to Vitkovice seems clear from the evidence. In the course of his own testimony (*Tr. p. 16945*) before this Tribunal, when examined with respect to the negotiations between Rasche and the Rothschild-Gutmann representatives in Paris, he was asked—

"Q. Didn't you instruct Rasche that he was being too favorable to these people?

The defendant answered—

"A. I don't remember, but I have talked very often and written very often about the subject. That may be."

He was then asked—"Did you talk to him very often?" He answered—"I did talk very often." Because of the outbreak of the war, the agreement which was under such circumstances consummated was not fully carried out. It cannot be overlooked, however, that Kehrl participated in and directed, to a considerable degree, the taking over of actual control and custody of the Vitkovice plants, pending the so-called negotiations for their purchase, inasmuch as he caused to be appointed a German, Henke, to take over the operation of Vitkovice, on the flimsy pretext that the managers in charge could not operate it properly. Obviously this taking over and withholding from the true owners was done for the benefit of the German economy. If it were to be claimed that this was done only to preserve public order and safety, we find irrefutable contradiction thereto in the thinly disguised and coercive steps taken to acquire the plant through the ostensible buying of control. Obviously, this indicated above all things a purposeful design to acquire the Vitkovice plant permanently for the German economy. The plant was, therefore, physically withheld from the owners, although the forced sale transaction was not fully consummated. Kehrl played a prominent and vital role in the taking over of such plants, and the placing of Henke therein as the Reich representative.

The regulations of the Hague Convention were clearly violated by such conduct. The incidents in this case are, in some respects, comparable to those surrounding the taking over of the Rombach plant by the defendant Friedrich Flick, and which was treated in Case 5 by Tribunal IV, as a violation of the Hague Convention.

There is an abundance of credible evidence in the record to show that the defendant Kehrl sanctioned the so-called Aryanization program of the Reich in the occupied territory of Bohemia and Moravia, which Aryanization program, with its confiscatory measures, became an important instrumentality to the spoliation program of the Reich.

It is indeed significant that among the various exhibits introduced by defendant is one which is an article written by him in April 1939 for the magazine "Four Year Plan." We refer to [*Document Kehrl 101*] Kehrl Exhibit 80, and we quote the following therefrom:

"In the reconstruction of the Bohemian and Moravian economy, a banking system simplified and strengthened by the financial power of the Reich, banking institutions of the Reich will play a leading part. *Abuses such as the unhealthy domination of the industries in the Protectorate by the banks, which were largely in Jewish hands, will have to be eliminated.* The new, organized banking system will be able (especially for the export trade) to secure for the Bohemian and Moravian economy all the facilities, which are warranted by tradition, of the German institutes and their intensive work just in this field during the last years. *With regard to the Aryanization of numerous* branches of industry which, of necessity, will be started and will have to be carried out carefully, the banks will be able to give powerful help." [Emphasis supplied.]

There is no doubt but that the Hermann Goering Works gained control of the bulk of the steel production of the Protectorate as well as substantial holdings in other enterprises. The evidence of the witness Dvoracek, who has been hereinbefore referred to as a qualified and credible witness, stated with respect to the economic results of the occupation of Czechoslovakia (*Tr. p. 8500*) :

"Q. Mr. Dvoracek, can you just explain these very briefly, just the over-all effect of these transfers of control?

"A. Yes. The Kehrl-Rasche group, after the occupation, wanted to get control, in one form or another, over Vitkovice. It had not been arranged by contract because of the outbreak of the war. There was then an absentee administration * * * over enemy property, and then the Hermann Goering Works had control. The Poldihuette foundry also came under the control of the Hermann Goering Works. That began after Munich in the spring of 1938, before the occupation, when the BEBCA stocks were being sold, because of the conditions among the Sudeten Germans, and control was acquired by the Hermann Goering Works. The Ferdinand Nordbahn also went over to the Hermann Goering Works, and the majority by taking over the coal fields, in short, everything of importance in the heavy industry with the exception of one machine factory came into German hands predominantly.

"Q. Mr. Dvoracek, my question is not the nature of the transfers, not what was transferred, but what was the significance of these things for the Czech economy? What was it, in economic terms, which went to the Germans?

"A. I can tell you that in a few sentences. Actual control of the Czech economy came into German hands. The Czech stockholders either had to sell their stocks or become unimportant

minorities, and even in so-called private economy, from the practical point of view, the control went into the hands of the Reich."

Despite such testimony, however, the defendant insisted during his examination that he was guided by humane and lofty motives. During his testimony on 12 August 1948, he stated (*Tr. p. 15772*):

"With reference to the Czech economy in the Protectorate, I was guided by the desire to contribute everything possible from the economic side to bring about a reconciliation between the Czechs and the Germans. To the best of my knowledge and conscience I did everything for this purpose that lay in my power. In my sphere of work I adhered to the sense of the Fuehrer decree and considered myself to be a genuine protector of the economic interests of the Czechs. I stuck to this opinion to the very last day of the war."

We now call attention to excerpts from another defense exhibit, namely an article of September 1940, written by defendant Kehrl for the "Four Year Plan" magazine, being [*Document Kehrl 119*] Kehrl Exhibit 82. We quote the following therefrom:

" 'Bringing about the Economic Integration of the Protectorate.'

"* * * The return of Bohemia and Moravia was followed by months of highest political tension with its repercussion on economic life, and finally on 1 September 1939, by the war, which England had declared in such a wanton manner, bringing about a complete change of all economic possibilities.

"The necessity and the logic of the political developments leading up to the return of Bohemia and Moravia into the framework of Greater Germany was fully understood in the country itself only by a few far-sighted politicians * * *.

"In spite of these unfavorable pre-conditions and in spite of the absence of *racial and political sources of energy* which had such a favorable influence on the reunion of Ostmark and the Sudetenland, the economic coordination and integration of Bohemia and Moravia has now been almost completely carried out * * *.

* * * * * * *

"The last available capacities were utilized to meet the tremendous requirements of Greater Germany, thus eliminating still existing unemployment. First consideration in this connection—according to the structure of the territory and the political signs of the hour—was the participation in the armament of the Reich. Within a short time the production of the

world-renowned and efficient works of the country such as the Skoda, Vitkovice, Bruenner-Waffen, etc., which to some extent were teamed up with German works for common production, were brought into line with the requirements of the German Wehrmacht, and these works have since had a valuable share in the completion of the German armament and in assuring ammunition requirements for the war. Thus they have contributed their share for the securing of their country, whose protection has been assumed by the Reich."

The evidence above alluded to, amply corroborated as it is by other evidence in the record, substantiates the charges that Kehrl, through his active participation in the acquisition and control of the industries and enterprises hereinbefore specifically referred to, violated the Hague Convention with respect to belligerent occupancy.

We will now consider the charge that Kehrl, through his participation in the formulation and execution of the so-called "Kehrl Plan," whereby Germany exploited textile production in the occupied territories of Belgium and France, including the removal of vast amounts of raw materials and manufactured products to the Reich from the occupied western territories, acted in violation of the Hague Convention. A careful examination of the evidence introduced in support of and in refutation of such charge convinces the Tribunal beyond reasonable doubt that the charge is true, and that such measures were a clear violation of Article 52 of the Hague Convention. We will here but briefly refer to some of the most significant items of evidence which support such conclusions.

It appears that defendant Kehrl had, prior to the war, become an expert on textiles. He had gained much experience in the textile industry prior to his taking up tasks for the Reich. In the course of his examination before the Tribunal by his own counsel, he stated with respect to his "positions and tasks in the Reich Ministry of Economics" as follows:

"I had two functions there simultaneously. First of all I was Chief of the Textile Department, and at the same time I was Generalreferent for Special Tasks with the State Secretary. These two positions I occupied until November 1942. In November 1942, after my former chief left, General von Hannecken, I became Chief of the Main Department II of which the Textile Department was a sub-department."

On 16 August 1940, it appears that defendant Kehrl signed and submitted a plan for the control and regulation of the French and Belgian textile production, which plan was drastic in its pro-

visions, and provided for a heavy percentage of textile deliveries in Germany from such western territories. Seizure of raw materials was contemplated, and certain textile factories were to be closed down. The German minimum for the amount of viscose silk which was required for delivery to Germany was provided for. It was further provided that if production did not satisfy the minimum demand for viscose, the minimum would still have to be procured "* * * at the expense of the Belgian consumption or export." Further illustrative of the drastic nature of the provisions is the following excerpt (*NI–817, Pros. Ex. 2416*):

> "The quantity of fabric produced in Belgium and northern France will be taken over to an extent of 70 percent (northern France 50 percent) through orders by the Wehrmacht plus central orders through the Zentreltextil. The remaining 30 percent 50 (percent resp.) are available for covering the civilian demands."

The plan thus submitted points out that in order to make the plan work "is to avail oneself of the following factors":

> "Immediately entering into with the procurement office of the Wehrmacht via the local armament office. Should individual offices fail to undertake the necessary steps at once, the undersigned must be wired personally."

The "undersigned" was, of course, Kehrl. It was contended by the defendant that the so-called plan hereinbefore referred to and signed by him, as of 16 August 1940, was not really the Kehrl plan, but was in the nature of a file note outlining "what the discussion had been and what was to be done to clarify the situation in the future." He admitted that he had done extensive work in the formulation of a plan through discussion and made definite contributions with respect to the matter which resulted in a so-called plan in February 1941, which was in the nature of an agreement signed by the French State Secretary, and the production ministry and Dr. Michel, the German Military Administrative Chief in the Headquarters, Paris, and by the Chief of the Office of the Military Commander in Brussels. This agreement, defendant admits, came to be known as the Kehrl plan, and is contained in [*Document NID–14479*] Prosecution Exhibit 2418, received in evidence by the Tribunal. In the course of his testimony before this Tribunal, defendant was asked, in effect, if the agreement thus consummated was not really carrying out the general objectives and promises and agreements that he had arrived at with the French in the conference which he had conducted. The defendant answered, "Yes, Your Honor, with minor changes."

It is necessary that we briefly consider the evidence with respect to the extent and amount of the textile removals from the occupied territories to Germany, pursuant to the Reich textile program, in the execution of which the evidence has indicated Kehrl was a vital and directing factor. A French official report introduced in evidence indicates in detail the following percentages of removals from the occupied territory of France over the 4 years 1941 to 31 May 1944, as follows (*NID–14479, Pros. Ex. 2418*):

"59 percent of all French wool products
53 percent of all French cotton products
65 percent of all French flax products."

The report states—

> "It should not be overlooked, however, that these figures constitute just one portion of the German removals—the only portion considered because it alone can be compared with the respective French resources. The seizure, requisition, removals of the accumulated stocks of the army, the orders over and above the imposition programs, etc., increase the amount of deliveries effected under the terms of the agreement."

The report also states that:

> "France supplied to Germany during the years of the war as raw materials or as manufactured products—as a minimum in terms of wool, 140,000 tons (of which 100,000 tons were posted in the books); in terms of cotton, 99,000 tons (of which 10,000 tons were posted in the books); in terms of flax, 53,000 tons (of which 38,000 tons were posted in the books); in terms of rags, 108,000 tons (of which 77,000 tons were posted in the books)."

The report goes on to state that in francs of current value and after deducting for reciprocal deliveries, and without considering the territories of the East, the total of the German removals thus made amounted to 32,055,000,000 francs. The evidence indicates that these products and materials, thus taken out of France, were purportedly paid for, largely through the device of the "clearing account," a device with respect to which the IMT made the following finding:*

> "In many of the occupied countries of the East and West, the authorities maintained the pretense of paying for all the property which they seized. This elaborate pretense of payment merely disguised the fact that the goods sent to Germany from

* Trial of the Major War Criminals, op. cit., volume I, page 240.

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these occupied countries were paid for by the occupied countries themselves, either by the device of excessive occupation costs or by forced loans in return for a credit balance on a 'clearing account' which was an account merely in name."

The evidence also indicates that to a lesser degree the device of occupation francs, which was charged against occupation costs, was employed. Occupation costs in France have hereinbefore been discussed under the circumstances here obtaining. The seizure of these textile materials and products is in obvious violation of the Hague Convention. The imposition of quotas, if not here amounting to out-and-out confiscation, would, under the most favorable construction for defendants, be termed requisitions. It appears clearly from the evidence that those were not imposed strictly for the army of occupation. On the other hand, it appears they were made for both the general army needs as well as the occupation army, and were also, to a substantial degree, imposed for the benefit of the civilian economy of Germany. This program, therefore, as carried out by the Reich under the direction of the defendant Kehrl, appears to be a violation of Article 52 of the Hague Convention.

The result of this systematic draining off of the vital resources and products was that rationing of textiles became necessary in France, and so extensive was spoliation of such products that during the last year of the war, it appears that textiles were practically off the French market, as far as purchases by the French people were concerned. In this connection, we will here call attention to a report of the Military Governor of France, dated 10 September 1942, and from which we quote the following excerpts:

"The manufacturing and production capacity of French industry which, at the armistice, had large supplies of raw materials and finished goods at its disposal, has, to a very great extent, been made to serve German war production."

He then makes the following specific reference to the French textile industry:

"The textile section shows a similar picture of the way in which French industry has been utilized to a far-reaching extent to the advantage of the Reich, 71,000 tons of wool, 64,000 tons of cotton, 70,000 tons of rags and further quantities of linen goods, cellular wool, and artificial silk being delivered to the Reich. France retained only 30 percent of the normal production of the woolen industry, 16 percent of the cotton and 13 percent of the linen production, for her own use."

It is significant that, with respect to Belgian flax, defendant himself, in his testimony of 19 August 1948, after having stated that the majority of Belgian flax was processed in Belgium "for linen goods", was asked who received such linen goods, and he stated:

> "Partly the Belgian population; partly technical purposes in Belgium; partly the German Wehrmacht; partly German civilian consumption."

He then admitted that, of these groups, the German Wehrmacht got most. Upon being asked from the bench what percentage of the production the Wehrmacht actually got, he stated:

> "A very high percentage, Your Honor. Now, I shouldn't be surprised if it was something like 70 percent."

Corroborating in many respects the evidence we have here alluded to, is the testimony given by one Elmar Michel, formerly Ministerialdirigent and head of the Economics Division in the Military Administration of France. Contained in a statement made by him, we have the following (*NID–14829, Pros. Ex. 2419*):

> "After Speer, as Minister, had the whole armaments and production, practically everything which concerned the production was drawn together there. Kehrl became General-referent for Special Tasks in the Ministry of Economics. As such indeed he could not issue the directives, but could have insight into all the departments. With the double function as Chief of the Planning Office and as Chief of the Raw Material Office, Kehrl held the key position in his hand, since setting up the Central Planning Board. It was Kehrl therefore, who fixed the quotas according to the decisions of the Central Planning Board and in this way had the decision about the civilian demand also in France, in the most important fields. The complaint, which I raised against Kehrl, was the inconsiderate relegation of human interests behind the armament demand, never mind whether in Germany or in France."

In redirect examination, the witness stated that during the occupation of France the defendant made a number of visits to Paris. When asked as to the purposes of these visits to Paris by the defendant, the witness stated (*Tr. pp. 5568–5569*)—

> "There were a number of visits. First of all, as you can see from the statements I made so far, there was a participation in the negotiations concerning textile supplies and exports which took place under the chairmanship of Herr Kehrl. Then later

when Kehrl was in Speer's ministry as a Chief of the Office of Raw Materials and Planning, he also came to Paris in this capacity."

On re-cross-examination, defense counsel asked said witness the following question and elicited the following answer (*Tr. p. 5570*):

"Q. Witness, who was the competent authority to initiate the textile rationing in France? Was that authority Kehrl?

"A. The competent authority for the question of the introduction of rationing of textiles in France, as seen by the Reich, was Kehrl, as Chief of the Textile Department of the German Ministry of Economics, to introduce textile rationing in France. * * * Well, formally of course not. Formally textile rationing in France could only be introduced by French law, and that is what happened."

In this connection, the Tribunal here calls attention to the fact that it has heretofore, in the course of discussing some of the general defenses interposed in this count, pointed out the untenability of the defense here interposed in behalf of Kehrl, also that activities of the occupying power in France were carried out under laws or sanctions of the renegade French Government at Vichy. We, therefore, deem it unnecessary to here further comment on this farcical pretense of legality with which the defendant here seeks to clothe his activities with respect to the Reich textile program in France.

An effort has been made to show that defendant Kehrl was of the opinion that he was acting properly, and that he was actually endeavoring to carry out the textile program in such a way as not to subject the French population to such excessive demands that it would result in privation to the French people. These professions, however, are not impressive in view of the defendant's actions, and in light of statements made by him during the course of such textile program. We will refer to one documentary exhibit of defendant's own authorship, in the form of a directive from Kehrl to Reich offices in control of production in France and touching, among other things, textile products and production. This directive is dated 27 March 1943. We quote the following excerpts therefrom:

"The task to mobilize all economic forces in the German sphere of influence for armaments, requires that the control in the occupied territories, above all in the West, will be adapted to that in the Reich as quickly and completely as possible and thereby to fit into the *Central* Planning Board."

* * * * * * *

"The Military Commander and I consider it to be urgently necessary to convert the control exercised in France, which is already extensively adapted to that in Germany, to a planned control of the finished products, according to the new order in the Reich.

"The commodity offices which are to be adjusted if necessary to the German area of jurisdiction for this purpose are to apply the procedure of the positive production directive, that is order what goods are to be produced, in what quantities and kinds they are to be produced, and who has to produce them. All other production except that which is prescribed is to be prevented. All other enterprises, except those taken over according to plan, have to close."

The Tribunal is of the opinion that the evidence establishes beyond a reasonable doubt that defendant Kehrl's participation in the formulation and execution of the Reich's spoliation program with respect to textiles, as hereinbefore discussed, is a violation of Article 52 of the Hague Convention.

We come now to the charges made against Kehrl under this count, with respect to spoliation in Russia and other occupied territories of the Baltic countries. It appears that on 4 August 1941 the Ostfaser Gesellschaft m.b.H. was organized, for the primary purpose of "managing the Russian textile industry in the interest of the German war economy." Kehrl became chairman of the Verwaltungsrat through the German Minister of Economics Funk, Kehrl being given wide powers in this organization. Subsidiary companies of the Ostfaser were subsequently organized with defendant Kehrl as chairman of the Verwaltungsrat of one of such subsidiaries, and as chairman of the Aufsichtsrat of two such subsidiaries. That Kehrl exercised extensive supervisory authority in connection with the operation of these enterprises is clear from reports submitted with relation to their activities. We quote from the business report of Ostfaser and its subsidiaries for the years 1941–42, as follows:

"For the first tasks, President Kehrl, established the following principles, on the occasion of two visits in Riga. Practical take-over of the factor plant management through the main offices and centers, consolidation of factory staffs (zusammengefasste Belegung) of the factories, uniform price policy, central purchasing, central adjustment of investments (Investitionen) necessary for the war economy, as well as laying claim to central bank credits and directing the use of capital through the Ostland Faser."

From a secret report on the activities of the Ostfaser companies from 1941 to 1942, we quote the following:

> "In accordance with the principles which were formed in the general plan and in the directives drawn up by President Kehrl, the planning of the production of its allocation (Belegung) followed through the central offices (Zentrale) in agreement with the authorities and the leadership staff (Fuehrungsstab) Berlin."

The evidence shows that through the Ostfaser Company and its subsidiaries, a vast number of industries were taken over and administered in Russia and the Baltic countries. The evidence establishes that through these organizations, vast quantities of raw materials were removed from the occupied territories for export to the Reich. As a matter of fact, the activity report of the Ostfaser G.m.b.H. for 1941–42 shows that during the 21-month period ending 30 June 1943, these removals totaled 29,208 tons, of which 26,000 tons were sent to the Reich. Other evidence also shows large shipments of raw materials out of the eastern territories during said period, through these Kehrl-dominated organizations. The same was true of textile stocks found by the Germans in the occupied territories in the Ostland. Indicative of the thoroughness of the spoliation thus practiced, we have but to note Ostfaser report of 1941–42 that shows that over 10,000 tons of wool and animal hair were removed during such period from the occupied eastern territories, valued at over 19 million reichsmarks.

It appears that one Dr. Doran, chairman of the board of the Aufsichtsrat, in the course of making a general business report at a general meeting of the Ostfaser and its subsidiaries, which meeting was presided over by Kehrl, on 13 December 1944, indicated that about 83,800 tons of textiles had been imported from the East to the Reich and that about 15,000 tons of cellulose and paper had been imported into the Reich from the eastern occupied territories. It also appears from the evidence that in the course of the evacuation of the eastern territories, when they were retaken from the German forces, great quantities of raw materials and finished textile products were shipped to Germany with the help of these organizations. In addition to this, vast amounts of factory machinery were sent to the Reich from the factories in the East. One prosecution witness [affiant], namely Lizdens, who had been employed in an Ostfaser enterprise in Latvia, stated (*NID–15677, Pros. Ex. C–461*):

> "During the time that I worked with the Baltische Seidenmanufaktur Rigas Audums, material was processed there which

had been stored for years. The greatest part, 75 percent approximately, of the production, however, was exported to Germany. Among other things, the plant was very extensively engaged in the special production of parachute silk for the use of the German armed forces. I know that, because the drivers of the motor trucks told us that they transported the material to a place from where it was shipped to Germany.

"I know, and it is a matter of common knowledge to anyone who lived in Latvia, that, during the German occupation, virtually no textile goods were available for the Latvian civilian population. Particularly no stockings were available to anyone for years. The suggestion that the average civilian got 5–6 pairs of stockings per year is simply ridiculous."

* * * * * * *

"When in 1944 the Germans anticipated the approach of the Russian Army, the work management of the Ostlandfaser loaded all supplies of goods and stripped the plant of all its machines and crated them. I myself have participated in the loading of goods. Among the items, inventoried for shipment to Germany, was also an excellent motor launch which belonged to the original owner of Rigas Audums, Hirsch."

It appears from the evidence that plans of evacuation were prepared jointly by the Ostfaser authorities and the Reich authorities, for a secret report on the activities of the Ostfaser companies from 1941 to 1944, hereinbefore referred to, stated that:

"In virtue of the experience, in the evacuation of the Ukraine and in consideration of the far greater industrial significance of the Ostland, evacuation plans, which have later proved very good, were jointly drawn up with the authorities, and have realized in the removal of the goods being carried out according to plan everywhere, where suitable schedules existed and the required loading space could be obtained."

From the evidence, the Tribunal is satisfied beyond a reasonable doubt that Kehrl's activities and participation in the spoliation program in Russia and in the occupied territories of the Baltic states, violates Article 52 of the Hague Convention, also Articles 53 and 55 thereof. We have heretofore, in connection with our treatment of charges against another defendant under this count, discussed the scope and applicability of the provisions of Articles 53 and 55 of the Hague Convention, with respect to state-owned property. There is no doubt but that, whether state or privately owned property was involved in the spoliation activities in which Kehrl took part, as hereinbefore indicated, such

property was treated in utter disregard of the provisions of the Hague Convention. It is clear that the last-mentioned stripping of plants in the eastern occupied territories, and shipping of the machinery therefrom to the Reich, was outright plunder, and a violation of the Hague Convention, whether such machinery was taken from state or privately owned plants in the occupied territories.

We find the defendant Kehrl guilty under count six.

RASCHE

In addition to the general charges made against defendant Rasche in this count, he is also specifically accused of having participated in the plunder of public and private property in Czechoslovakia. It is asserted that he and the defendant Kehrl were specifically empowered by Goering to acquire and regroup major segments of Czech industry, so that they could be coordinated effectively with the German war effort. It is asserted that these two defendants drafted and executed plans for the seizure of control of important Czech coal, steel, and armament properties. It is alleged that with defendant Kehrl supervising, the defendant Rasche acted as the sole negotiator for many of the properties selected for acquisition and that he was authorized to employ all necessary means and devices, including the use of forced expropriations. It is asserted that, as a result of these activities of defendants Rasche and Kehrl, the Hermann Goering Works secured ownership and control of plants and properties forming the foundation of the industrial life of Czechoslovakia.

It is asserted that Rasche participated in the transfer and control of major financial institutions in Czechoslovakia to Germans, and that after the absorption of various branch banks in the Sudetenland and after the occupation of Bohemia-Moravia, the defendant was able to secure for the Dresdner Bank, control of the Boehmische Escompte Bank, hereinafter referred to as BEB. It is asserted that the formal exchange of control of the BEB was accomplished by writing down the value of the existing shares, and issuing new shares, to which the Dresdner Bank subscribed. It is asserted that the Dresdner Bank, by the use of similar techniques, acquired the Bank fuer Handel und Industries, formerly the Laenderbank, Prague, and merged it with the BEB. It is alleged that the defendant Rasche further participated in, facilitated and sought advantages from, the program of Aryanization introduced into countries occupied by Germany, designed to expel Jews from economic life and involving threats, pressure, and coercion to force Jews to transfer their properties to Germans.

It is further asserted that defendant Rasche participated in the necessary financing of spoliation agencies in eastern occupied territories. It is specifically asserted that defendant Rasche directed and supervised the activities of the Dresdner Bank and its affiliates in occupied western areas, involving economic exploitation, including particularly activities involving transfer of control of Dutch enterprises to selected German firms through the process called "Verflechtung," which was an interlacing of Dutch and German capital and economic interests.

Because of the vast amount of testimony here adduced by the prosecution and the defense, rigorous summarization becomes necessary in our treatment of this part of the case. We will first turn to the charges relating to Czechoslovakia, exclusive of the Sudetenland. The findings of the IMT and the evidence in this case clearly establish the carrying on of an indefensible spoliation program in the eastern occupied territories, including Czechoslovakia. The judgment of the IMT states, "Czechoslovakian industry was worked into the structure of German war production and exploited for the German war effort." We are here concerned with the question whether Rasche participated in such spoliation program. The evidence shows that immediately following the occupation of Prague, the Boehmische Escompte Bank, BEB, was taken over by German interests. The taking-over measures consisted of a series of rather thinly disguised actions in connection with which defendant Rasche appears to have been closely identified. It is of interest to note that on the very day of March 1939, when the Reich forces marched into Prague, von Luedinghausen, a then member of the Vorstand of the Dresdner Bank, appeared in the BEB at Prague, garbed in military uniform. Immediately thereafter, the Verwaltungsrat of BEB was reorganized, in the course of which sixteen members resigned, of whom ten apparently were so-called non-Aryans. It appears that seventeen new members were chosen, and among them were defendant Rasche and Gustav Overbeck, also a member of the Vorstand of the Dresdner Bank. Defendant Rasche became chairman of the Verwaltungsrat of the BEB. It is significant that on 15 March 1939, at the time of the invasion of Czechoslovakia, the BEB had a capital stock of 130,000,000 koruna, divided into 650 shares. At that time, it appears that the Dresdner Bank did not own any shares of BEB. At least, they were not shareholders of record. Despite this, it appears that the control of said bank was dominated by the Dresdner Bank from and after 15 March 1939. The evidence shows that thereafter the formality of a general meeting of shareholders was held on 22 May 1939. It appears

that defendant Rasche assumed the presiding position in such meeting, although his election had not yet been approved by the general meeting. It was at this meeting that a plan for the reduction of the capital stock from 130,000,000 koruna to 32,500,000 was effected, followed by an increase to 100,000,000. The last-mentioned increase was largely taken up by the Dresdner Bank which, with the shares they acquired out of the BEB treasury stock, gave them holdings equivalent to approximately 70 percent of the outstanding stock, whereas prior to such manipulation they were not even stockholders of record. It appears that at this meeting defendant Rasche's position as chairman of the Vorstand was confirmed. The defendant, in the course of his testimony before this Tribunal, in making reference to the appearance of von Luedinghausen, a director of the Dresdner Bank, in the BEB, on the day of the invasion of Prague, indicated that it was little more than a coincidence. It has been observed, however, from the evidence, that the same von Luedinghausen had displayed an active interest in the acquisition of the BEB prior to the invasion, and continued to be an active participant in the affairs of the Dresdner Bank and the BEB, and their activities with respect to Czechoslovakia after 15 March 1939. The evidence establishes beyond reasonable doubt that the BEB was taken over and dominated by the Dresdner Bank and Rasche, by and through coercive police-state measures, including the use of threats and concentration camps and Aryanization of holdings in such bank, all of which was possible because of the Reich's purpose to work the BEB and other financial institutions into the German economy.

After the BEB came thus under the domination of the Dresdner Bank, it was conducted by Rasche and such Dresdner Bank. We must remember that during this period the defendant Rasche was also chairman of the Vorstand of the Dresdner Bank. The foregoing references to the evidence allude to but a small part of the great mass of evidence, which establishes clearly the illegality of the taking over and the domination of the BEB by the Dresdner Bank and Rasche.

Following the taking over of control of the BEB by the Dresdner Bank, and while it was largely under the supervision and control of defendant Rasche, the BEB took an active part in the extreme confiscatory and indefensible Aryanization program of the Reich in Czechoslovakia. This is abundantly proved by various items of documentary evidence introduced in this case. In this connection it is noteworthy that, in a report of the Dresdner Bank dated August 1941, mention was made with respect to the Aryanization activities of such bank from March 1939

to April 1941. We quote the following excerpts from said report (*NID–13463, Pros. Ex. 3095*) :

"According to the enclosed report we have carried out officially approved Aryanizations amounting to a total purchase price of about K 232,000,000 since the establishment of the Protectorate in March 1939 until April 1941. In respect to these purchase prices, consideration should be given to the fact that they were set as low as could be economically justified. In normal times, of course, the total value of Jewish property so far transferred into Aryan hands with our help would undoubtedly be higher.

"We have received commissions of about K 4,900,000 from these activities. The report states that there are presently approximately 100 uncompleted Aryanizations. Most of the cases are in textile or food categories.

"Our intensive efforts in the 'Entjudungssektor' (De-Judification Branch) have brought in a number of valuable accounts and an expansion of our credit business. In addition, the specialized activity in the field was highly beneficial in the general promotion of our business."

Defendant Rasche, while on the stand, denied that he had ever seen this report. This is not important. The fact remains that it is credible evidence of the extent of the Dresdner Bank participation in the Aryanization program during the period mentioned. It further indicates the effectiveness of the Aryanization as an instrumentality of spoliation. There can be little question but that defendant, as active head of the Vorstand of the BEB, was conversant with such an extensive activity of such bank. In this connection, we also make reference to a letter, under date of 29 March 1939, containing a memorandum relative to conferences held, which memorandum was made by one Herbeck, a Vorstand member of the Dresdner Bank, and was directed to the defendant Rasche. This memorandum reveals the purpose and manner of Aryanization authorized and decided upon for the German banks, with respect to Czechoslovakia. The cover letter to Dr. Rasche reads as follows (*NID–13365, Pros. Ex. 3093*) :

"My dear Dr. Rasche: Enclosed you will find a memorandum covering various conferences concerning different affairs, which will interest you. Tonight a meeting of the German banks will take place at Mr. Kehrl's office where directives for Aryanizations in this territory will be discussed. I have an appointment with von Luedinghausen on Friday in Dresden and at that occasion I will report to you about the results of that meeting.

"With Heil Hitler I am very truly yours,

(Signed) HERBECK"

A pertinent excerpt from said report read as follows:

"Conference with *Referents of RWM, SD and Gestapo.*

"In order to maintain the German economic position in Bohemia and Moravia local German banks will preferably be concerned in cases of Aryanization. Aryanization will be carried through on the principles of private economy. Our advantage compared with Czech banks: Priority exit visa issued by Gestapo. Non-Aryans transfer their property through trustees to local German banks and receive exit permits in return.

"In order to avoid Jewish influence to be taken over by the Czechs a special decree will be issued tomorrow according to which the sale of Jewish property must be approved upon by the authorities. Schicketanz and Overbeck started already on the first cases of Aryanization. (Bloch-Bauer)."

The foregoing references allude to but a small part of the evidence, which establishes clearly that Rasche participated with the Dresdner Bank in the Reich's indefensible program of Aryanization in connection with the illegal program of spoliation of Czechoslovakian economy.

We will now turn to the charge that defendant Rasche participated in the spoliation program of the Reich, with respect to Czechoslovakian industry. It appears clearly that defendant Rasche took an active part in bringing important Czechoslovakian industries under the complete domination and control of Reich interests, all in keeping with the announced purpose of the Nazi hierarchy, as indicated in the findings of the IMT hereinbefore referred to.

It appears that sweeping and coercive police-state measures were also used in securing shares in such industries, so that an ostensible majority stock control could be displayed. Sales under duress, Aryanization of Jewish holdings, tantamount in a great many cases to plain confiscation, were extensively practiced. In such program, the BEB and its Vorstand President Rasche, played an important role. As a result, it was possible for the Hermann Goering Works to secure control of both the Poldihuette and Erste Bruenner Maschinenfabrik holdings in Czechoslovakia. It is noteworthy that the Poldihuette of Prague was a large producer of steel of the highest quality, and it and the Erste Bruenner Maschinenfabrik were among some of the most vital and important companies in Czechoslovakia. It is significant that subsequently authorization was given for the making of outright gifts from Poldihuette to Reich Marshal Goering in the sum of 600,000 RM. This would indicate the correctness of the claim that the

seizure and domination of such industries was entirely for the benefit of the German masters.

It is further claimed by the prosecution that Rasche also took an important and active part in acquiring for German interests control of the large Skodawerke in Czechoslovakia, an armament, tank, and vehicle producing plant, and another similar plant, the Bruenner Waffenwerke. According to statements of defendant Kehrl, made by him during an interrogation on 18 October 1946, he and defendant Rasche represented the Reich government in the plan to acquire control of the Skodawerke, and that the demand of the German Government for a transfer of a controlling block of stock in Skoda from Czechoslovakian hands to German hands, was transmitted by them. It appears that Kehrl and Rasche began work on the acquisition of Skoda and Bruennewerke immediately after the occupation of Prague. From the evidence, it appears clearly that coercive measures were again employed in acquiring these industries. As a result of the activities of Rasche and Kehrl in these transactions, controlling interests in these industries came into possession of Kehrl and Rasche as trustees, and were subsequently—that is, late in 1939 or early in 1940—transferred to the Hermann Goering Works. That such transaction was an illegal act of spoliation, there can be no doubt. A great deal of evidence in the record, not here specifically alluded to, further sustains this charge.

It appears that Rasche took an active part in negotiations for the acquisition of the Rothschild-Gutmann holdings in the great Vitkovice steel plants, the then largest producer of iron and steel in Czechoslovakia. It appears that such negotiations were finally concluded, but the payment never was completed because of the progress of the war. While such negotiations were going on, it appears that the plant was being operated for the benefit of the German war economy under a so-called absentee trusteeship in which defendant Rasche held a managing position. It further appears that while such negotiations were being conducted, one of the Rothschilds was in custody of the Gestapo in Vienna. It appears from the documentary evidence that permission was secured for Rasche from the Gestapo to interview said Rothschild, while he was in such custody. It further appears that Rasche hinted at drastic measures if the agreement was not reached. The documentary evidence with respect to this matter is interesting, as illustrative of some of the methods resorted to by the Reich in the carrying out of spoliation projects.

The evidence is voluminous and convincing that the Dresdner Bank and the defendant Rasche also participated in the Reich spoliation program in Holland. It is amply proved that, through

coercion, Aryanization tactics, and other police-state measures, vast amounts of property were transferred to German interests, and that the Dresdner Bank and Rasche took an active part in various ways in such nefarious traffic. In Holland, this was largely done through the agency of the Handelstrust West, a concern organized and controlled by the Dresdner Bank as a subsidiary. The Aryanization activities and the traffic in confiscated property in Holland, as carried out by this agency, it is abundantly proved, was extensive and was carried out under the control of the Dresdner Bank, whose policies in these respects reflected the attitude and purposes of defendant Rasche. Efforts made by the defendant and some witnesses to minimize these activities are ineffectual and unconvincing.

We will here refer to but a few of the numerous exhibits introduced by the prosecution in support of the charges against defendant Rasche with respect to spoliation in Holland. These are illustrative of the voluminous evidence introduced, and which convincingly establish said charges. It appears that the Dresdner Bank played a leading role in the organization of the Handelstrust West in Holland in 1938, and that from then on "its issued capital * * * was uninterruptedly in the hands of the Dresdner Bank or undertakings under the control of the Dresdner Bank * * *." It further appears that after Holland had been overrun by the German forces, the Handelstrust West assumed a more active role, and acted as the representative of the Dresdner Bank. The evidence shows that, in 1940, one F. Dellschow, a former employee of Dresdner Bank in Berlin, became manager of Handelstrust West. In such capacity, he made detailed reports to the Dresdner Bank, and frequently went to Berlin to make personal reports.

It appears that in March 1941 Seyss-Inquart, the Reichs Commissioner for the occupied Netherlands, issued a decree, dated 12 March 1941 which was therein referred to as "Decree of Economic De-Judaization," which decree provided in part as follows (*NID–14791, Pros. Ex. 3000*):

"(1) The Reich Commissioner for the occupied Netherlands (Commissioner General for Finance and Economy) may appoint trustees for enterprises subject to registration.

"(2) The cost of the trustee administration will be borne by the enterprise concerned."

[Paragraph 8]

"(1) Unless otherwise stipulated on the appointment of a trustee, the latter has power to handle all legal business and transactions in and out of court, which the management of the enterprise entails. *He may, in particular, sell the whole or part*

of the enterprise, and fix the terms of sale. While the enterprise is under trusteeship, a guardian, custodian or other administrator cannot validly be appointed. While the enterprise is under trusteeship, the powers of the proprietor, the manager or any other person authorized to act as deputy of the administrator, are suspended. The same applies for the powers of all existing boards; their powers are conferred upon the trustee. However, the Reich Commissioner for the Occupied Netherlands (Commissioner General for Finance and Economy) may decree, that the boards retain part of or all their powers.

"(2) If the enterprise is entered in the commercial register, the appointment of the trustee will be entered free of charge in the commercial register as a matter of official routine." [Emphasis supplied.]

[Paragraph 12]

"The Reich Commissioner for the Occupied Netherlands (Commissioner General for Finance and Economy) may forbid enterprises which are subject to registration to carry on business. He may give instructions that such enterprise be wound up or closed down altogether, up to a certain date fixed by him."

It should here be noted that a memorandum by one Rienecker, an official of the Dresdner Bank, dated 5 March 1941, and directed to defendant Rasche, makes reference to the fact that a draft of an Aryanization law had been completed and would probably be promulgated on 15 March of that year, it being indicated that same came as the result of a conference with German officials in The Hague. Said memorandum then proceeds to describe quite correctly the provisions of said decree, as revealed by its subsequent publication, such decree being the same hereinbefore referred to as made by Seyss-Inquart. The memo further states (*NID–8866, Pros. Ex. 2958*):

"For the banks it would be advisable to obtain powers of attorney from their German customers and to file the claims on their behalf in advance of such 'Meetings of Planning' in which they do not participate. The procedure of the Meetings of Planning is also going to start in the middle of March and is carried on independently of the date on which the Aryanization Law becomes effective. Therefore months will elapse yet. We have to find out details yet in regard to the order in which each of the trades will be dealt with.

"In case the Meeting of Planning has finally determined the person who is to acquire the enterprise, and if in principle this person agrees to the acquisition, the purchase price will not be

fixed by negotiations but a so-called fair price will be arrived at and fixed by a trustee's office which will be set up for this purpose by the office of the Reich Commissioner." [Emphasis supplied.]

From the evidence it also appears that, on 15 March 1941, Dellschow wrote to defendant Rasche that (*NID–8865, Pros. Ex. 3006*) :

"The text of the Aryanization Law which will be supplemented by carrying-out ordinances, was promulgated on 13 March. We have immediately wired the essential parts of the contents to Berlin.

"At a meeting which took place here in Amsterdam on 12 March and in which the Reich Commissioner addressed the German colony, he declared, that the 'de-Judaification' of the economy will radically be carried out here in Holland. We of the Handelstrust will therefore soon have to reckon with much work in this field, as we can already see from the length of our waiting list of persons interested in acquiring businesses of that kind."

In evidence we also have the statement of one Max Bardroff who, from 1940 to September 1944, was a member of the Advisory Committee of Handelstrust West in Amsterdam. Said statement reads in part as follows (*NID–13645, Pros. Ex. 2970*) :

"1. I was assigned to above position by the Vorstand of the Dresdner Bank, Dr. Rasche personally. At the time of my activity Dr. Rasche was a member of the Vorstand of the Dresdner Bank responsible for Holland. At the same time I was manager of the Dresdner Bank Duesseldorf, which also was subordinated to Dr. Rasche. I was, therefore, in all my activities responsible to Dr. Rasche. My activities with the Handelstrust West N.V. naturally consisted mainly in negotiations and carrying out transactions between western Germany and Holland. I wish to add that the majority of transactions of the Handelstrust West N.V. were carried out with western Germany. Apart from that I put my experiences as branch manager at the disposal of the management of the Handelstrust West, as the majority of them did not have sufficient knowledge. I did this in compliance with the request of Dr. Rasche, who had full confidence in me. My position therefore was not only an official one but also a position of trust. Apart from the current business reports which were sent from the Handelstrust West N.V. via the Auslandssecretariat S to Dr. Rasche, I kept Dr. Rasche constantly informed of the affairs of the Handels-

trust West N.V., mostly verbally when we met. So, Dr. Rasche was informed in detail of all important occurrences, transactions and conferences of the Handelstrust West N.V.

"2. In June, 1940, the Handelstrust West N.V. had a staff of 5–6 employees which evenly increased until September 1944 to 40–50. This increase resulted from the expansions of the transactions. I have to explain that in 1940 the Handelstrust West N.V. had no branches for stocks and bonds, letters of credit, or banking transactions; all of which were only established after 1940.

"3. For interlacing transactions, and Aryanizations, Dr. Robert Hobirk was delegated to the Handelstrust West N.V. as an employee of the Dresdner Bank. This was necessary as on account of the increase of these transactions, the assignment of a special employee had become imperative. Dr. Hobirk therefore had been given special leave from the forces in compliance with a request made by the Handelstrust West N.V. with Dr. Rasche's consent. Dr. Hobirk kept the Auslandssekretariat S informed as to his activities and apart from that also Dr. Rasche on his visits to Holland."

There was also introduced in evidence a statement by the said Dr. Hobirk, above referred to, which throws light upon his activities, the responsible role of Dr. Rasche in the spoliation program and the extent to which same was carried on. We quote the following therefrom (*NID–13647, Pros. Ex. 2971*):

"In Berlin, I was an official handling assigned problems (Sachbearbeiter) in one of the Dresdner Bank's branch offices, where I became chief of department in 1939. In spring 1939 I was called out into the army, at first for voluntary training period which subsequently became military service for war purposes. In June 1940, I was assigned as organizer of the main registry in the office of the Wehrmacht Commander for the Netherlands. In about October 1940, on request of Dr. Karl Rasche and Max Bardroff, I was exempted from military service for a daughter company of the Dresdner Bank, the Handelstrust West in Amsterdam, where I stayed until November 1942. From the knowledge acquired within this period I am in a position to make the following statement:

"My working sphere at the Handelstrust West was the so-called interlocking of capital (Kapitalverflechtung). For further elucidation I want to say that this expression indicates the participation of German capital in Dutch enterprises, *be it by way of voluntary purchase or other steps, as for instance by Aryanization. This was part of the program of the German*

Government for the Netherlands. This sphere of tasks was allocated to me by Mr. Bardroff by order of Dr. Rasche. Dr. Rasche, at that time, was Vorstand member of the Dresdner Bank and in this capacity responsible for the Netherlands. I have been acquainted with Dr. Rasche since 1935. During my activity I was not an employee of the Handelstrust West, but of the Dresdner Bank, and my salary was also paid in Berlin, though I received daily allowance in Holland. These daily allowances, however, were paid back by the Foreign Secretarial Office. (Auslandssekretariat). On my activity I reported to the Foreign Secretarial Office, attention Dr. Entzian. Dr. Rasche received these reports, as he was responsible for Holland. I further reported continually on western German affairs to Bardroff, and to Dr. Rasche I also reported orally on my activity as often as he was in Holland. Dr. Rasche expressed his satisfaction on the progress of my work, in view of the fact that by this the Handelstrust West was earning commissions.

"In order to be able to carry out my tasks, I resorted to various brokers who informed me of available Jewish property and other objects for acquisition. I then tried to find a German buyer for this object. Simultaneously, I asked the owner about his readiness to sell and negotiated with him. In other cases, Germans recommended by the Foreign Secretarial Office of the Dresdner Bank came and informed me of their interest in an object already defined or of their interest of general nature. I may add that, in Holland, this amalgamation business (Verflectungsgeschaeft) consisted of 50 percent of Aryanizations." [Emphasis supplied.]

Also in evidence is a statement of said Hobirk listing numerous firms which were Aryanized and merged through the Handelstrust West.

That the Handelstrust West did a brisk business in the execution and carrying out of such Aryanization program appears from a report of the foreign department of the Dresdner Bank of 12 September 1941, which report states in part as follows (*NID-8868, Pros. Ex. 3010*):

"In the course of the Aryanization of the Dutch industry the local customers made use, to a considerable extent, of the services of the Handelstrust. Numerous visitors from Germany —an average of 150 per month—were there given advice and aid."

There is considerable evidence in the record showing specific instances of Aryanization through threats and pressure, and

active participation by the Handelstrust West in the consummation of such illegal transactions.

The evidence introduced to sustain the charges made against defendant Rasche with respect to spoliation in Belgium, is not so voluminous or convincing as that introduced with respect to Holland. An official report of the Commissioner of the National Bank of Belgium, covering from May 1940 to May 1941, the first year of the German occupation of Belgium, indicates that among the German banks which, through permission of the Reich Economic Ministry, had been permitted to found strongholds in Belgium, was "the Dresdner Bank, which took up activities under the name of Continentale Bank SA, N. V. This is in the form of a corporation under Belgian law, and has a stock capital of 10 mill. bfrs." It further appears that Rasche was the member of the Vorstand of the Dresdner Bank given responsibility for the conduct of its business in Belgium.

A number of communications, emanating from various officials in the Dresdner Bank and the Continentale Bank, indicate that participation in the spoliation program through Aryanization was within the contemplation of such officials, and it seems that some such communications were directed to Rasche. For instance, in evidence is a letter from a director of the Dresdner Bank to an official of the Continentale Bank, suggesting that—

> "It seems to be particularly advisable to make sure of an influential informant in Belgium who has good insight into matters and with whom one can cooperate, and who, in the interest of both, draws attention to possibilities of industrial participation. As far as it would be possible to reveal weak points in the manner, (non-Aryan blocks of shares and other debatable participations), affiliated firms could be contacted here in the Reich and given a useful hint."

From such evidence, however, it does not convincingly appear that defendant Rasche furthered or implemented the spoliation program through the Continentale Bank, or that the spoliation activities charged were, in fact, committed by the Continentale Bank, either with or without his knowledge. The fact that correspondence and other documentary evidence indicates that sinister and illegal plans were being contemplated does not, of itself, constitute sufficient basis for a finding of guilt. Furthermore, we can not predicate guilt on the showing that the Dresdner Bank provided several million marks for the acquisition of certain Polish shares of the blasting furnace plant Ostrowiec for the Hermann Goering Works. The statement by the prosecution, as contained in its brief, that "it is perfectly clear from the time

sequence and the amounts involved that Rasche participated as a major agent in the forced transfer of these shares" is not a tenable contention.

The further claim that the Continentale Bank lent itself to the spoliation of Belgium, by acting as an agent in the disposal of allegedly confiscated securities and other valuables, likewise cannot, under the evidence adduced, be made the basis of a finding of guilt. The evidence discloses that the bank did handle some securities, which the witness, Count Philip Orssich, concluded were confiscated securities. There does not appear to be in evidence, however, adequate factual basis for the witness's conclusion. In evidence also is a statement of one Janmart, an employee of the Continentale Bank during the German occupation of Belgium. In such statement, witness indicates that he observed what seemed to him to be rather questionable business transactions, with respect to certain securities, which were handled and disposed of by the Continentale Bank. This witness also concluded that such securities were illegally confiscated property, and he states, "* * * it is evident that the whole business was one of the numerous forms of 'legal looting' carried out by the Germans during the occupation of Belgium." The sincerity of the witness in arriving at such conclusion is not questioned, but the fact remains that it does not appear that his conclusion is supported properly by factual evidence. We would not be justified in predicating a finding of guilt on such conclusion, with respect to the charges made against Rasche regarding spoliation in Belgium.

The charges against defendant Rasche, with respect to spoliation activities in Poland and Russia and the Baltic countries, consist largely of claims that defendant Rasche, through Dresdner Bank, gave financial assistance in financing the requirements of Reich spoliation agencies, active in the Reich program of spoliation in such territories. It appears from the evidence that credit was given to agencies which probably were engaged in spoliation activities. As hereinbefore indicated, on this question in discussions in our treatment of count five, and in view of the evidence generally with respect to the credits here involved, we do not find adequate basis for a holding of guilty on account of such loans. Because of defendant's participation in spoliation in Bohemia-Moravia and Holland, we find him guilty under count six.

SCHWERIN VON KROSIGK

In addition to the general charges made against all defendants in this count, it is specifically charged that, "the German Foreign

Office and the defendant Schwerin von Krosigk played a significant role in establishing and carrying out programs for economic exploitation in various occupied countries, particularly in occupied territories in the West. These programs included exaction of excessive occupation indemnities, establishment of so-called "clearing accounts" and the "transfer to German ownership of industrial participation and foreign investments by means of compulsory sales." It is further specifically alleged that defendant Schwerin von Krosigk, with other defendants, took part in numerous meetings at which exploitation policies were discussed and plans were made.

At all the times covered by the charges in this count defendant Schwerin von Krosigk was Reich Minister of Finance, he holding such position from 1932 to 1945. He thus held that important Cabinet office in the Reich throughout the period in which the Reich, under Hitler, launched and carried out its various aggressive invasions, wars, and other unconscionable crimes and programs which are under consideration in this proceeding.

The defendant, in the course of his examination before this Tribunal, sought to justify his continuance in such position throughout the period in question by asserting that he desired to exert a good influence upon the Nazi government. He indicated that in the fall of 1938 he had consulted people close to him on whether or not he should stay in his Cabinet position. He stated that a resignation by him "would have robbed myself and those circles in the population who knew and trusted me of the opportunity to see to justice, right, order, and decency in my own sphere of work, over and beyond that of trying, if an opportunity should arise, to raise the voice of reason and justice * * *." We also wish to here allude to another statement made by the defendant during the course of his examination. With respect to a prosecution exhibit dealing with a conference over which Goering had presided the defendant stated, "It didn't matter so much what Goering said, but on what was actually done." We must here point out that what defendant now says is of much less importance than what he actually did during the times in question with respect to the formulation, execution, or furtherance of the wrongful acts or programs which are here involved.

It appears that within a few weeks after Poland was invaded by German forces a decree, bearing date 12 October 1939 (*2537–PS, Pros. Ex. 491*), and signed by Hitler and various other Reich officials, among them the defendant Schwerin von Krosigk, was issued, placing the territories thus occupied under the authority of Dr. Frank as Governor General. Section VII of such decree provided:

"(1) The cost of administration shall be borne by the occupied territory.

"(2) The Governor General shall draft a budget. The budget shall require the approval of the Reich Minister of Finance."

This is of importance as indicating that as of that early date and at that stage of the Reich's program of aggression and crime, defendant Schwerin von Krosigk was one of the officials whose participation and approval was essential, his role being with respect to an extremely vital feature of the project.

It must be noted that on the date of 19 October 1939 Goering directed to all the Reich ministers, business groups, plenipotentiaries of the Four Year Plan a rather long and formal directive in the nature of a recapitulation of directives for the economic administration of the occupied territories, which directives he had issued "during a session of 13 October." We quote the following excerpt from said directives (*EC–410, Pros. Ex. 1286*):

"On the other hand, there must be removed *from the territories of the Government General all raw materials, scrap materials, machines,* etc., which are of use for German war economy. Enterprises which are not absolutely necessary for the meager maintenance of the bare existence of the population must be *transferred to Germany,* unless such transfer would require an unreasonably long period of time, and would make it more practicable to give these enterprises German orders, to be executed at their present location."

He also called attention in said directive to the fact that he had founded a Main Trustee Office for the East and defined its duties with respect to the economic administration of the occupied territories.

That the Reich Minister of Finance cooperated in the program which thus included sweeping confiscatory features is attested to by the fact that under date of 18 January 1940 a note by Ministerialdirigent Bayrhoffer of the Ministry of Finance sets forth the procedure for the handling of "captured funds," prefacing said statement with the words (*NG–5251, Pros. Ex. 3922*):

"The following was arranged at the conference held on 29 November 1939, in agreement with the OKH and OKM (High Command of the Army and High Command of the Navy)."

It is true that the note in question does not expressly indicate whether or not the "captured funds" were state-owned or privately owned, but it appears that specific reference is therein made to savings account books which obviously would not be state-owned property, and the defendant during his examination

before this Tribunal practically admitted that he could not conceive that kind of property to be "war booty."

That the defendant was kept informed of the nature and progress of the Reich's criminal program in Poland becomes clear from the fact that on 12 February 1940, Field Marshal Goering held a meeting in Berlin (*EC–305, Pros. Ex. 1289*) which in the report thereof is designated as "most secret." At such meeting, among others, were present Governor General Frank, defendant Koerner, Reich Leader SS Himmler, and defendant Schwerin von Krosigk. At such meeting Goering explained "that the strengthening of the war potential of the Reich must be the chief aim of all measures to be taken in the East." We call attention to the following excerpts from said report.

> "If all measures must serve the chief purpose of strengthening the economic power, we must refrain, within the area, from the attempt of Germany to bring it up to the standard of the Old Reich (Altreich) immediately. The process of assimilation in the new eastern Gaue will, therefore, be much slower than was possible in Austria and in the Sudeten Gau in times of peace. It will be the task of the Reich to carry out the reconstruction of the East with all its power *after the end of the war.*
>
> * * * * * * *
>
> "The task consists of obtaining the greatest possible agricultural production from the new eastern Gaue disregarding questions of ownership. The Minister of Food and Agriculture has the sole responsibility for this, regardless of when, where, and how they will later be settled. Transfer of property can be considered only for the Baltic Germans and for the Volhynian Germans * * *."

At said meeting it was reported by one Lord Lieutenant [Oberpraesident] and Gauleiter Wagner with respect to the eastern territories that:

> "Agriculture is in good shape. Industry could increase its output by 30 to 50 percent if it were possible to eliminate the transportation difficulties. No evacuations have taken place so far. However, for the future the deportation of 100 to 120 thousand Jews and 100,000 unreliable Polish immigrants is being considered * * *."

It further appears that:

> "The Reich Commissioner for the Consolidation of the German Race, Reichsfuehrer SS Himmler, reports that 40,000 Reich Germans had to be accommodated in Gotenhafen [Gdynia], and that room had to be made for 70,000 Baltic Germans and 130,000 Volhynian Germans. Probably not more than 300,000

persons have been evacuated so far (the Polish population being 8 Mill.)

"On the other hand it will probably be necessary to transfer into the eastern Gaue 30,000 Germans from the Lublin area east of the Weichsel *which is to be reserved for Jews.*"

It appears from the evidence that Goering conducted another meeting concerning the economic policy and economic organization in the recently occupied eastern territories on 8 November 1941. The memorandum prepared on the results of such meeting, and dated 18 November 1941, (*NI–440, Pros. Ex. 1062*), it appears was sent to, among others, the defendants Lammers, Darré, Pleiger, and Schwerin von Krosigk. We call attention to the following significant paragraphs from such memorandum:

"I. For the duration of the war *the requirements of the war industry* are the supreme law of all economic operation in the *recently occupied eastern territories.*

"II. In the long-range view, *the recently occupied eastern territories* will be economically exploited *from colonial viewpoints,* and by colonial methods. The only exceptions are those parts of the Eastland which are designated for Germanization at the direction of the Fuehrer; but they too are subject to the principle stated in I above.

"III. The point of gravity for all economic work lies in the production of food and *raw materials.* The highest possible production prices for the supplying of the Reich and the other European countries are to be attained through cheap production and maintenance of the low living standards of the native population. In this manner, a source of income for the Reich is to be opened up, which will make it possible to cover in a few decades a large part of the debts incurred in the financing of the war while sparing the German taxpayer insofar as possible, and at the same time will fill the European food and raw material requirements to the greatest possible extent.

"IV. Further processing will be admitted in the occupied eastern territories only insofar as this is absolutely necessary:

a. To reduce the volume of transportation (that is, processing in principle as far as steel and aluminum ingots),

b. To fill the urgent demands for repairs in the country,

c. To exploit capacities in the armament field during the war.

* * * * * * *

"VI. There is no question of *supplying the population* with high-priced consumers' goods. Rather, all tendencies toward raising the general living standard are to be forestalled by the sharpest possible measures. The kind and quantity of the

consumers' goods and means of production to be delivered to the recently occupied eastern territories are to be agreed upon with the economic agencies of the Reich Commissioners.

Even the Eastland [Ostland] must for the present be supplied with consumers' goods only to the most modest extent possible. The long-range order for the Germanization of the Eastland must not lead to a general raising of the living standard for all the peoples living there. Only the Germans located in the Eastland, or to be settled there, and the elements to be Germanized, may be treated better.

"VII. The Russian *price and wage level* is to be kept as low as is anywise possible. Any disturbance of the price and wage policy, aimed exclusively at the interests of the Reich, will be ruthlessly prosecuted. The principle applies even to the Eastland that the surpluses, especially in the agricultural sector, must flow into the Reich at the lowest possible prices.

* * * * * * *

"E. *Directives for the military economic exploitation of the recently occupied eastern territories.*

"1. Feeding and Agriculture—The point of gravity lies in the feeding sector. Everything must be done to produce as many agricultural products as possible and to make them usable for the requirements of the troops and the Reich. This involves the following requirements:

* * * * * * *

"3. In certain territories (especially the middle territory) there are large stocks of animals which must be ruthlessly and rapidly seized in order to ease the meat situation in the Reich, so that the animals may not lose too much weight. A prerequisite for the collection and removal of these stocks is for the moment still lacking military and police security in the territories from which large quantities of livestock can be taken. Here the Army must assist under all circumstances.

* * * * * * *

"*e. Provisions for the population—*

* * * * * * *

"2. The urban population can receive only slight quantities of foodstuffs. For the big cities (Moscow, Leningrad, Kiev) nothing at all can be done for the time being. The consequences resulting therefrom are hard, but unavoidable.

"3. Persons working directly in the German interest will be fed at the plants by direct issues of foodstuffs in such a manner that their working strength will be maintained to some extent.

"4. In the Eastland, also, the food rations for the indigenous population will be reduced to a level lying considerably below the German (level) so that from there also the largest possible surpluses may be squeezed out for the Reich.

* * * * * * *

"*a.* All agricultural and industrial installations are the property of the Soviet State. This property has now been transferred to the Reich.

* * * * * * *

"3. It is the clearly pronounced will of the Fuehrer that the Reich's burden of debt arising from the war must for the most part be covered by receipts that must be extracted from the recently occupied eastern territories.

* * * * * * *

"1. Budgets for the income and outgo of the Reich Commissariats will be drawn up by the Reich Minister for the Occupied Eastern Territories and approved by the Reich Finance Minister.

"2. The Reich Finance Minister will determine what receipts in the Occupied Eastern Territories shall flow directly into the Reich Treasury and what receipts shall be left at the disposal of the Reich Commissioners within the framework of their budget."

From the foregoing it is obvious that Schwerin von Krosigk was given vital assignments in connection with the program of spoliation embarked upon by the Reich. That Schwerin von Krosigk took seriously the assignments thus given him and that he supported and aided in the program of spoliation and that he urged and suggested improved methods with a view to greater efficiency of such program is indisputably clear from a secret memorandum signed by Schwerin von Krosigk, dated 4 September 1942, which memorandum was directed to, among others, the Reich Marshal of Greater Germany, the Reich Minister and Chief of the Reich Chancellery, the Chief of the OKW, the Leader of the Party Chancellery, the Reich Minister for the Occupied Eastern Territories, the Reich Minister for Arms and Ammunition, the Reich Minister of Economics, the Reich Minister of the Interior, and the Reich Minister for Food and Agriculture. We call attention to the following excerpts from said secret memorandum (*NG–4900, Pros. Ex. 3924*):

"Administration, economy, and finances of the occupied territories in the East.

"The Reich expects considerable economic and financial relief to come from the occupied eastern territories. These terri-

tories are to secure the food for the German people. Oil, coal, ores, and other raw materials are to be taken out of the East for the purposes of the German, nay the European economy. A considerable part of the war debits, especially the interest and amortisation debits of the Reich, are to be covered by the financial surplus of the occupied eastern territories and by the integration of the difference in prices between the Reich and the East. Even now, the occupied territories in the East have gained an extraordinary importance within the framework of the German war economy. For food supplies, they are the largest supplier of the armies in the field. The mining of shale in Esthonia, and of manganese ore in the Ukraine are valuable credit items. In spite of Soviet destruction, a multitude of industrial plants go on working. The labor potential of the East is serving our production. *Even greater use will have to be made of the eastern territories in the present situation. In this connection I may refer to the statements of the Reich Marshal at the meeting of 6 August 1942.*" [Emphasis supplied.]

Referring to the shortcomings of the organization involved he states:

"It would have been within the meaning of the original plan to have entrusted a unified, strong leadership with the building-up of administration and economy. In the East, the economy was not supposed to lead the state, but the property of the Reich, conquered by German soldiers in self-sacrificing combat and still being so conquered, should be administered and kept in trust, in the true sense of the word, in the interests of the Reich and used *exclusively to further its interests.* The power and the skill of the German entrepeneurs should have been exploited through several big East companies, whereas the political direction should have been safeguarded by the Reich commissioners concerned. These measures of organization were supposed to form the basis of a clear and simple price policy, which would have helped on its part to relieve the immense, financial stress on the Reich." [Emphasis supplied.]

That the spoliation program with respect to Poland thus participated in by Schwerin von Krosigk, resulted in tremendous returns for the Reich the evidence amply demonstrates. Included in the evidence bearing on this is a report of the Research Office for Military Economy, dated 10 October 1944, dealing with "the financial achievements of occupied areas up to 31 March 1944." We find from such report that the Governor General contributed about 1,200,000,000 reichsmarks as a so-called "defense contri-

bution." The evidence indicates that the confiscation program extended into the Danzig area also and that a report from the office of the Reich Minister of Finance concerning the confiscation of Polish and Jewish estates in Danzig indicates that 345 estates were confiscated and debts totalling millions of reichsmarks were canceled because owed to the Poles. A communication from the Reich Minister of the Interior included in such correspondence and other evidence in the record makes it appear that the Reich Minister of Finance actively participated in the administration of such confiscated property. As a participant in the formulation, implementation and furtherance of the Reich's spoliation program as it dealt with Poland, he is criminally responsible therefor.

In connection with the charges against defendant with respect to the criminal program of spoliation carried out by the Reich in Belgium, Holland, and Luxembourg, there is considerable evidence in the record to show the illegal nature and sweeping scope of the spoliation program of the Reich in those countries. This is true with respect to occupational costs levied against Belgium. The illegal removal of gold and securities and other confiscatory measures and programs destructive and harmful to the economy of the occupied territories are contrary and in violation of the Hague Convention. The evidence, however, adduced to implicate defendant in such spoliation program with respect to Belgium, Holland, and Denmark does not convincingly establish such participation as to render defendant Schwerin von Krosigk guilty under the charges made. The evidence indicates that he received information with respect to many of the illegal actions complained of, but the Tribunal is not satisfied beyond a reasonable doubt that he participated in the formulation, implementation, or furtherance of the acts of spoliation hereinbefore referred to with respect to Belgium, the Netherlands, or Denmark. With respect to Yugoslavia there is a communication indicating that he expressed an intention to increase the tax levy in such country for the benefit of the Reich. We find, however, no evidence that he caused such levy to be imposed.

We come now to the charges of spoliation made against defendant Schwerin von Krosigk with respect to the occupied territory of France. The spoliation of France by the Reich authorities has been abundantly established by the findings of the IMT and by a vast amount of evidence introduced in this case. The question for our decision is whether defendant Schwerin von Krosigk took such part in the formulation, execution, or furtherance of such spoliation measures as to render him guilty of violation of the Hague Conventions governing belligerent occupancy. The evi-

dence in this case established beyond any doubt that the so-called occupation costs imposed on France were outrageously excessive. There is evidence in the record indicating that this was in fact the view of some of the German officials who were connected with the imposition thereof. It is also clear from the evidence that a considerable part of such so-called occupation costs were not in fact allocated to cover occupation expenses, but were used for other general purposes. It appears from the evidence that the defendant Schwerin von Krosigk was advised and knew of the nature and extent of such imposition. It appears, however, to the Tribunal, from the evidence introduced with respect to Schwerin von Krosigk, and also from evidence which has been touched upon in the treatment of charges against other defendants under this count, that the actual responsibility for the imposition of such excessive occupation costs was not actually shared by the defendant Schwerin von Krosigk. We will, therefore, not pursue the discussion of occupational costs further.

We come now to the contention that defendant Schwerin von Krosigk, as Reich Minister of Finance, administered plundered property taken over by the Ministry of Finance through the Reich Main Pay Office, and that Schwerin von Krosigk gave orders as to its liquidation. The defendant, in the course of his testimony on the stand, indicated that he had helped in the administration of war booty and that he had included in the things that he had thus administered savings bank books of individual savers. An attempt to justify the seizure and administration of such property and securities as having been the securities of the enemy power and not of private individuals apparently was abandoned by the defendant, he finally asserting that the seizure "was Wehrmacht jurisdiction."

It is significant that a memorandum from the Reich Ministry of Finance office is in evidence dated 17 January 1944, which states that (*NG–5338, Pros. Ex. 3925*):

> "On the occasion of his visit to Sigmaringen on 13 January 1944 the Minister ordered that the articles of booty which are located in the Reichshauptkasse (Reich Treasury) are to be utilized. For this purpose it is to be ascertained what quantities are located there. The stored articles are then to be handed over to suitable agencies for realization."

There is also in evidence a letter written by defendant Schwerin von Krosigk, dated 19 December 1944, to the Reich Main Pay Office, also designated War Booty Office, wherein the defendant states such office is (*NG–5248, Pros. Ex. 3926*):

"* * * to allow the Municipal Pawn Shop to utilize also the objects made from precious metals, precious stones, and pearls, which are stored with you.

"Objects made from platinum and gold (bracelets, rings without stones and pearls), old and working silver, silver shavings and silver in rolls, are immediately to be transferred to the Reich Office for Precious Metals in Berlin."

There is no justification for asserting as a defense that the articles above referred to were seized and administered as war booty. The term "war booty" has become limited to including enemy property which, because of its military character, and not on account of military necessity, would be liable to confiscation. From the evidence it appears that the Reich Ministry of Finance had, for a considerable period of time and on different occasions, participated in exchanges with other Reich offices and officials relative to the seizure and administration of property belonging to inhabitants of the occupied territories, often Jewish-owned property being specifically mentioned. Such discussions and consideration took place with respect to property from Belgium, France, and Poland, but apparently was not limited to such areas.

From the foregoing it is established beyond a reasonable doubt that defendant Schwerin von Krosigk wrongfully participated in the wrongful confiscation of property from the occupied territories through his work in connection with its custody after seizure, and subsequent liquidation. Because of defendant's active participation in the formulation, implementation, and furtherance of the spoliation program of the Reich in Poland, and because of his part in the custody and subsequent administration and liquidation of the Reich's illegally confiscated property, improperly referred to as "war booty" by defendant, which activities we deem to have been in clear violation of the Hague Conventions with respect to military occupancy, we must and do find defendant Schwerin von Krosigk guilty under count six.

COUNT SEVEN—WAR CRIMES AND CRIMES AGAINST HUMANITY; SLAVE LABOR

Count seven charges that defendants von Weizsaecker, Steengracht von Moyland, Woermann, Lammers, Stuckart, Ritter, Veesenmayer, Berger, Darré, Koerner, Pleiger, Kehrl, Puhl, and Rasche committed, during the period from March 1938 to May 1945, war crimes and crimes against humanity, as defined by Article II of Control Council Law No. 10—

"* * * in that they participated in enslavement and deportation to slave labor on a gigantic scale of members of the

civilian population of countries and territories under the belligerent occupation of, or otherwise controlled by, the Third Reich; enslavement of concentration camp inmates, including German nationals; the use of prisoners of war in war operations and work having a direct relation to war operations; and the ill treatment, terrorization, torture, and murder of enslaved persons, including prisoners of war. The defendants committed war crimes and crimes against humanity in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with, the commission of war crimes and crimes against humanity."

It is further asserted in this count that the acts and conduct above referred to were carried out as part of the slave-labor program of the Third Reich, with the deliberate purpose to maintain German military power and to weaken the countries and territories occupied by Germany.

It is further asserted that the resources and needs of the occupied countries were completely disregarded in the carrying out of such slave-labor programs, as also were the family honor and rights of the civilian populations involved. It is asserted that frequently the work assigned was of a character which required the laborers to assist military operations against their own countries, and prisoners of war were often compelled to work on projects directly related to war operations. It is asserted that, through such slave-labor program, at least 5,000,000 workers were deported to Germany, and that other inhabitants of occupied territories were conscripted and compelled to work in their own countries to assist the German war economy. It is further alleged that, in many cases, labor was secured through fraud or by drastic and vile methods, including systematic impressment in the streets and by police invasions of homes. There are further allegations to the effect that persons deported were transferred under armed guard, often being packed in trains under cruel and degrading conditions, without adequate heat, food, clothing, or sanitation. It is alleged that millions of persons, including women and children, were subjected to such labor under cruel and inhumane conditions, such as lack of adequate food or shelter, which resulted in widespread suffering and many deaths.

It is asserted that the treatment of slave labor and prisoners of war was based on the principle that they were to be fed, sheltered, and treated in such a way as to exploit them to the greatest possible extent at the lowest possible cost.

During the course of the trial, the charges of this count of the indictment were dismissed, insofar as they relate to the defendant Woermann.

In addition to the foregoing general allegations, which are directed against all the defendants who are charged in this count, the count contains further and more specific charges against each individual defendant. Such specific charges will hereinafter be set forth in connection with our consideration of the case of each individual defendant in this count. It is asserted that the said acts and conduct of the defendants hereinbefore set forth were committed unlawfully, wilfully, and knowingly, and in violation of international conventions, including the Hague Convention of 1907, the Prisoners-of-War Convention, Geneva, 1929, of the laws and customs of war, and of Article II of Control Council Law No. 10, as well as general principles of criminal law, as derived from the criminal law of all civilized nations, and of the internal penal law of countries in which such crimes were committed.

The provisions of the said Hague Convention and the Prisoners-of-War Convention, Geneva, 1929, and Article II of Control Council Law No. 10 which are here pertinent follow:

Article 52 of the Hague Convention [Annex to Convention No. IV of 18 October 1907] provides in part as follows:

> "Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country."

The Prisoner-of-War Convention, Geneva, 1929, provides in part as follows:

> "Article 29. No prisoner of war may be employed at labors for which he is physically unfit.
>
> "Article 30. The length of the day's work of prisoners of war, including therein the trip going and returning, shall not be excessive and must not, in any case, exceed that allowed for the civil workers in the region employed at the same work. Every prisoner shall be allowed a rest of twenty-four consecutive hours every week, preferably on Sunday.
>
> "Article 31. Labor furnished by prisoners of war shall have no direct relation with war operations. It is especially prohibited to use prisoners for manufacturing and transporting arms or munitions of any kind, or for transporting material intended for combatant units.
>
> * * * * * * *
>
> "Article 32. It is forbidden to use prisoners of war at unhealthful or dangerous work.

"Any aggravation of the conditions of labor by disciplinary measures is forbidden."

Article II, Control Council Law No. 10, paragraph 1(*b*) and (*c*), state:

"(*b*) *War Crimes.* Atrocities or offences against persons or property constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

"(*c*) *Crimes against Humanity.* Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated."

We need not here discuss at length the great mass of evidence which establishes beyond any doubt that, during the times charged in this count, a slave-labor program had been inaugurated and was being carried out during said period, by and under Reich governmental control. A great deal of evidence adduced in this case is corroborative of and amplifies the findings set forth in the IMT judgment. Inasmuch as it may be helpful in the ensuing treatment of this count, we call attention to the following excerpts from the IMT judgment, with respect to the Reich slave-labor program, which program is involved in this count.*

"The laws relating to forced labor by the inhabitants of occupied territories are found in Article 52 of the Hague Convention, which provides:

" 'Requisition in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.'

"The policy of the German occupation authorities was in flagrant violation of the terms of this convention. Some idea of this policy may be gathered from the statement made by Hitler in a speech on 9 November 1941—

* Trial of the Major War Criminals, op. cit., volume I, pages 243-244.

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" 'The territory which now works for us contains more than 250,000,000 men, but the territory which works indirectly for us includes now more than 350,000,000. In the measure in which it concerns German territory, the domain which we have taken under our administration, it is not doubtful that we shall succeed in harnessing the very last man to this work.'

"The actual results achieved were not so complete as this, but the German occupation authorities did succeed in forcing many of the inhabitants of the occupied territories to work for the German war effort, and in deporting at least 5,000,000 persons to Germany to serve German industry and agriculture.

"In the early stages of the war, manpower in the occupied territories was under the control of various occupation authorities, and the procedure varied from country to country. In all the occupied territories compulsory labor service was promptly instituted. Inhabitants of the occupied countries were conscripted and compelled to work in local occupations, to assist the German war economy. In many cases they were forced to work on German fortifications and military installations. As local supplies of raw materials and local industrial capacity became inadequate to meet the German requirements, the system of deporting laborers to Germany was put into force. By the middle of April 1940 compulsory deportation of laborers to Germany had been ordered in the Government General; and a similar procedure was followed in other eastern territories as they were occupied. A description of this compulsory deportation from Poland was given by Himmler. In an address to SS officers he recalled how in weather 40 degrees below zero they had to 'haul away thousands, tens of thousands, hundreds of thousands'. On a later occasion Himmler stated:

" 'We must realize that we have 6 to 7 million foreigners in Germany * * *. They are none of them dangerous so long as we take severe measures at the merest trifles.'

"During the first two years of the German occupation of France, Belgium, Holland, and Norway, however, an attempt was made to obtain the necessary workers on a voluntary basis. How unsuccessful this was may be seen from the report of the meeting of the Central Planning Board on 1 March 1944."

The report of the meeting of the Central Planning Board of 1 March 1944, above alluded to in the IMT judgment, was also introduced in evidence before this Tribunal.

We quote further from the said IMT judgment, with respect to the slave-labor program:*

* Ibid., pp. 244–247.

"Committees were set up to encourage recruiting and a vigorous propaganda campaign was begun to induce workers to volunteer for service in Germany. This propaganda campaign included, for example, the promise that a prisoner of war would be returned for every laborer who volunteered to go to Germany. In some cases it was supplemented by withdrawing the ration cards of laborers who refused to go to Germany, or by discharging them from their jobs and denying them unemployment benefit or an opportunity to work elsewhere. In some cases workers and their families were threatened with reprisals by the police if they refused to go to Germany. It was on 21 March 1942 that the defendant Sauckel was appointed Plenipotentiary-General for the Utilization of Labor, with authority over 'all available manpower, including that of workers recruited abroad, and of prisoners of war.'

"The defendant Sauckel was directly under the defendant Goering as Commissioner of the Four Year Plan, and a Goering decree of 27 March 1942 transferred all his authority over manpower to Sauckel. Sauckel's instructions, too, were that foreign labor should be recruited on a voluntary basis, but also provided that 'where, however, in the occupied territories, the appeal for volunteers does not suffice, obligatory service and drafting must under all circumstances be resorted to.' Rules requiring labor service in Germany were published in all the occupied territories. The number of laborers to be supplied was fixed by Sauckel, and the local authorities were instructed to meet these requirements by conscription if necessary. That conscription was the rule rather than the exception is shown by the statement of Sauckel already quoted, on 1 March 1944.

* * * * * * *

"The resources and needs of the occupied countries were completely disregarded in carrying out this policy. The treatment of the laborers was governed by Sauckel's instructions of 20 April 1942 to the effect that: 'All the men must be fed, sheltered and treated in such a way as to exploit them to the highest possible extent, at the lowest conceivable degree of expenditure.'

* * * * * * *

"The general policy underlying the mobilization of slave labor was stated by Sauckel on 20 April 1942. He said:

" 'The aim of this new gigantic labor mobilization is to use all the rich and tremendous sources conquered and secured for us by our fighting armed forces under the leadership of Adolf Hitler, for the armament of the armed forces, and also for the

nutrition of the Homeland. The raw materials, as well as the fertility of the conquered territories and their human labor power, are to be used completely and conscientiously to the profit of Germany and her allies * * *. All prisoners of war from the territories of the West, as well as the East, actually in Germany, must be completely incorporated into the German armament and nutrition industries * * *. Consequently it is an immediate necessity to use the human reserves of the conquered Soviet territory to the fullest extent. Should we not succeed in obtaining the necessary amount of labor on a voluntary basis, we must immediately institute conscription of forced labor * * *. The complete employment of all prisoners of war, as well as the use of a gigantic number of new foreign civilian workers, men and women, has become an indisputable necessity for the solution of the mobilization of the labor program in this war.' "

The question requiring our determination is whether the defendants charged under this count, or any of them, were responsible for the formulation, execution, or furtherance of such slave-labor program. We must find the answer to such question by examination and analysis of the evidence adduced by the prosecution to sustain the charges made in this count, and through examination and analysis of the evidence adduced by the defendants in refutation of the charges here made.

We will now proceed to a consideration of the charges and the evidence in this count, as they relate to the individual defendants.

VON WEIZSAECKER

In addition to the general charges contained in count seven and made against all the defendants, the defendant von Weizsaecker is specifically accused, with other defendants, of having [par. 64 of the indictment]—

"* * * supported and effected such transfers and deportations on a large scale. Their participation in the slave-labor program included securing the enactment of compulsory labor laws for occupied and satellite countries, conducting negotiations and bringing pressure upon those governments to send workers to Germany, urging military commanders in the occupied territories to fill manpower quotas, giving 'legal' advice and justifications to German authorities, and defending or concealing the character of the labor program from the inquiries of neutral states acting as protecting powers, and sanctioning the use of prisoners of war in war operations."

The Tribunal is unable to find in the testimony adduced by the prosecution, with respect to count seven, sufficient basis for a finding of guilt, insofar as defendant von Weizsaecker is concerned. Some official documents may have come to his attention, which may have apprised him of the existence of the slave-labor program. We consider, however, that there is a complete failure to show active participation or responsibility on the part of von Weizsaecker for the formulation of the slave-labor program, its execution or furtherance. We, accordingly, must and do find the defendant von Weizsaecker not guilty as charged in count seven.

STEENGRACHT VON MOYLAND

In addition to the general allegations made against all defendants in count seven, the defendant Steengracht von Moyland is specifically accused of having attended an important manpower conference in July 1944, which conference was presided over by defendant Lammers, and which dealt with the question of introducing more ruthless methods of conscription and exploitation of slave labor, and at which conference it is asserted defendant Steengracht von Moyland stated [par. 63 of the indictment]:

> "* * * that continuous political and diplomatic pressure would be maintained on the puppet and satellite governments to secure their maximum cooperation in effecting these measures."

It is further specifically alleged that defendant Steengracht von Moyland, with other defendants, supported and effected transfers and deportations of slave labor on a large scale from satellite governments, and that he, with other defendants, participated in the slave-labor program, in that he was instrumental in securing [par. 64 of the indictment]—

> "* * * the enactment of compulsory labor laws for occupied and satellite countries, conducting negotiations and bringing pressure upon those governments to send workers to Germany, urging military commanders in the occupied territories to fill manpower quotas, giving 'legal' advice and justifications to German authorities, defending or concealing the character of the labor program from the inquiries of neutral states acting as protecting powers, and sanctioning the use of prisoners of war in war operations."

The defendant Steengracht von Moyland did not assume the position of State Secretary in the Foreign Office until 1943, which was after the institution of the notorious slave-labor program of

the Reich. It is obvious, therefore, that he took no part in the launching of such program. It is the contention of the prosecution, however, that he actively participated in carrying out and in furthering said program of slave labor. To substantiate such claim, the prosecution introduced evidence relative to a conference held on 11 July 1944, presided over by defendant Lammers, and attended by many Reich departmental chiefs. Reference is made to the fact that Steengracht von Moyland, who attended such meeting on behalf of the Foreign Office, seems to have participated in the discussion. It appears that said meeting had been called at the apparent behest of the Plenipotentiary General for Labor Allocation, Sauckel, with a view to overcoming the deficiencies of labor, the labor recruitment program of the Reich not having supplied the necessary requirements of the Reich. It seems that at this meeting, it was indicated that the Foreign Office might do something definite in procuring the greater cooperation of the foreign satellite governments in the slave-labor program. It appears that defendant Steengracht von Moyland indicated that the Foreign Minister was generally in sympathy with Sauckel's program of labor recruitment, but that the Foreign Office was without effective means for securing such cooperation, it being pointed out that the most that could be done by the Foreign Office was to remind and to urge the foreign governments to comply with the wishes and requirements of the Reich on the question of labor supply. It appears also that defendant Steengracht von Moyland indicated that the remedy for the situation must come from someone vested with the proper authority and power to accomplish the desired ends, and that such power and authority was not in fact vested in the Foreign Office.

It appears that the meeting was given suggestions by Plenipotentiary Sauckel as to the methods which should be employed in the effort to overcome the difficulties being experienced on the labor question, it being stated by the presiding officer that such suggestions would be transmitted to the Fuehrer.

The Tribunal has carefully considered the evidence and is of the opinion that the participation of defendant Steengracht von Moyland in the slave-labor program, as represented by his participation in, and contribution to, the general discussion at the conference in question, does not constitute such participation or furtherance of the slave-labor program as would make defendant Steengracht von Moyland guilty under count seven.

There is not sufficient evidence to sustain the other charges made in count seven against defendant Steengracht von Moyland, to the effect that he supported and effected transfers and deportations of slave labor from the satellite governments on a

large scale, or was instrumental in securing the enactment of compulsory labor laws for occupied and satellite countries, or that he brought pressure upon commanders in the occupied territories to fill manpower quotas, or gave spurious legal advice and justifications to the German authorities relative to the slave-labor program, or that he concealed the character of the labor program from the inquiries of neutral states, acting as protecting powers, or that he sanctioned the use of prisoners of war in war operations.

The Tribunal, therefore, finds the defendant Steengracht von Moyland not guilty under count seven.

LAMMERS

In addition to the general charges made against all defendants in count seven, the defendant Lammers is specifically charged with having coordinated the activities of the various Nazi agencies involved in the slave-labor program, and to have resolved their jurisdictional disputes, and to have served as a liaison between these agencies and Hitler. It is asserted that the defendant Lammers presided at major conferences on the labor problem, where he mediated conflicting views and offered his own suggestions to the direct administrators of the program, such as Sauckel. It is alleged that his influence in slave-labor matters was consistently exercised in the direction of the strongest execution of the enslavement program. It is charged that on 21 March 1942, the defendant Lammers, with Hitler and Keitel, signed legislation (*1666–PS, Pros. Ex. 2605*) appointing Sauckel as Plenipotentiary General for the Utilization of Labor, with a view to utilizing all available manpower, including that of workers recruited abroad and of prisoners of war. It is further asserted that defendant Lammers, with other defendants, participated in the formulation, drafting, and issuance of laws and decrees which regulated the wages and conditions of employment of slave labor, and that defendant Lammers and defendant Stuckart determined the respective priorities of labor recruitment drives. It is specifically alleged that at an important manpower conference in July 1944 which was presided over by defendant Lammers, the introduction of more ruthless methods of conscription and exploitation of slave labor were discussed. It is further asserted that defendant Lammers, in cooperation with defendants Berger and Stuckart, participated in the execution of plans for the forceful seizure and impressment of young persons from the occupied territories without regard for age, sex, or work status into the service of pseudo-military organizations, commonly known as the

SS Air Force Helpers, SS Trainees, SS Helpers, and Air Force Helpers. It is pointed out in such charges that, in the so-called Heu-Aktion, which was a part of the same program, thousands of boys and girls 10–15 years of age were conscripted and deported to the Reich to work in the German armament industry.

The evidence adduced by the prosecution in support of the charges above referred to is extremely voluminous. A detailed discussion of all the evidence thus introduced cannot be indulged in here. Specific references, however, to some of the most significant parts of the testimony are essential to this opinion, especially in view of the fact that the defendant, in testifying in his own behalf, specifically asserted that the slave-labor program was "not within his sphere," thereby seeking to absolve himself from all blame for the formulation, implementation, or carrying on of such program. It was further asserted by the defendant that some of the acts charged were made with respect to legal recruitment.

We have heretofore, in connection with the preceding counts, discussed the defendant Lammers' role in the formulation and promulgation of decrees. A brief consideration of the decrees signed by Lammers in connection with the formulation, implementation, and carrying out of the slave-labor program is, therefore, necessary in a consideration of the claims made that Lammers is guilty of criminal participation in the slave-labor program. Before referring to decrees issued in connection with the slave-labor program, it is well to note that as early as 21 March 1940 the Reich Minister of Labor directed a long and comprehensive report to defendant Lammers, as the Reich Minister and Chief of the Reich Chancellery, relative to employment since the beginning of the war, and which report made reference to an earlier report of 31 October 1939. The report thus made to Lammers calls attention to industrial and war production labor requirements, and reference is made to the extensive use already being made of Polish workers from the Government General and the Incorporated Eastern Territories. The report concludes (*NG–1190, Pros. Ex. 2603*):

> "I should be pleased if during a discussion you would inform the Fuehrer on developments of the labor situation as based on the above statements."

On 31 October 1941 we find defendant Lammers writing to the manager of the Party Chancellery, Reichsleiter Bormann, wherein Lammers reasons and argues against the setting up of a new and additional office for the administration of labor. Here Lammers

also discusses "the indoctrination and police supervision of the foreigners."

Especially significant in this letter, as revealing the influence of Lammers in the shaping of important policy legislation before submission to Hitler for final approval and action, is the following passage (*NG–1179, Pros. Ex. 2604*):

> "In conclusion, I want to express my thanks to you, because by making the appropriate reference you have supported my constant endeavors to procure in a subject matter for the persons concerned the opportunity to state their opinion before the Fuehrer decides an issue. *Such prior hearing of all persons concerned is not only necessary at all times in the interest of the issue at hand, but also requisite to prevent that decisions which are inadequate or not fully reflected upon be submitted to the Fuehrer for execution.* [Emphasis supplied.]

On 21 March 1942 a Hitler decree, cosigned by defendant Lammers and Keitel, was promulgated. This decree did not set up a new labor office, which Lammers had opposed, but instead it appointed Gauleiter Fritz Sauckel as Plenipotentiary General for the Utilization of Labor. This decree states that it is being made (*1666–PS, Pros. Ex. 2605*):

> "In order to secure the manpower requisite for the war industries as a whole, and particularly for armaments, it is necessary that the utilization of all available manpower, including that of workers recruited (Angeworbenen) abroad and of prisoners of war, should be subject to a uniform control, directed in a manner appropriate to the requirements of war industry, and further that all still incompletely utilized manpower in the Greater German Reich, including the Protectorate, and in the Government General and in the occupied territories, should be mobilized."

In the discussion under count six, with respect to the part played by Lammers in the promulgation of decrees, this particular decree and the part played by Lammers, according to his own testimony, in the making thereof, is treated.

On 30 September 1942 another Hitler decree was issued (*1903–PS, Pros. Ex. 2607*), also cosigned by Lammers and Keitel. This decree authorized Sauckel to take all necessary measures for the enforcement of the 21 March 1942 decree within the territory of the Greater German Reich, in the Protectorate of Bohemia and Moravia, and in the occupied territories.

It further appears from the evidence that on 15 February 1942 following the death of Fritz Todt, Albert Speer was appointed

Reich Minister for Armaments and Munitions. The decree of appointment was signed by defendant Lammers. This appointment is here noted for the reason that the activities of Speer became a big factor in the slave-labor program in the Reich, and will be hereinafter discussed in another connection.

Further and convincing evidence as to the importance of the role played by defendant Lammers in the policy and conduct of the labor program is found in the fact that on 13 February 1943 the defendant Lammers sent out an invitation to the heads of the Reich administrations in the occupied countries of Norway, Holland, the Protectorate of Bohemia and Moravia, Belgium, France, and the Government General for a conference relating to "measures for the mobilization and the commitment of labor for tasks connected with the Reich defense." It appears that Bormann, Funk, Speer, and Sauckel were also invited to attend such conference. In such invitation, Lammers calls attention to the fact that (*NG–3388, Pros. Ex. 2612*):

> *"The Fuehrer has commissioned the Chief of the Wehrmacht High Command, the Leader of the Party Chancellery, and myself,* to take care of a systematic carrying out of his directives in the occupied territories too. In agreement with the Chief of the Wehrmacht High Command and the Leader of the Party Chancellery, I think it advisable to discuss with you, as well as with the competent supreme Reich offices, what measures you can take in this respect in the territories administered by you." [Emphasis supplied.]

The results of such conference were a series of reports on the problems being encountered by the Reich in the application of its slave-labor program in the occupied countries. Further proof of the active policy role of Lammers in the slave-labor program appears from a conference held on 4 January 1944 (*1292–PS, Pros. Ex. 2617*), this one being attended by Hitler, Lammers, Sauckel, Speer, Keitel, Milch, Backe, and Himmler. At such conference it was decided, among other things, that "at least four million new workers from the occupied territories" were to be procured, and it was to be determined "how the production of the actual existing labor, especially that of the prisoners of war, can be activated and intensified." The report of such meeting was subsequently sent by defendant Lammers to Bormann.

Immediately after the conference just referred to, it appears that Sauckel requested the defendant Lammers "to support me in the introduction of the measures which have become necessary as a result of the conference." As an indication of the importance of the part played by defendant Lammers in the slave-labor pro-

gram, it may be noted that Gauleiter Sauckel, who was the director for the slave-labor allocation in Germany, and Speer who had a persuasive voice in the recruitment of labor for the armament industries in the occupied territories, had substantial differences because each encroached on the province of the other to fill his slave-labor quota. As a result of such difference, and with a view to reconciling the conflicting demands, an important conference was called to meet in Berlin on 11 July 1944. It is significant that such conference was attended by the Ministers of the Reich, or their representatives, and also by heads of important departments of government, as well as representatives from the administration of the occupied territories. Among those present were Gauleiter Sauckel, General Warlimont of the OKW, the representative of the Military Commander of Belgium and Northern France, the Plenipotentiary General for Italy, Reichsleiter Dr. Ley, Reich Minister Funk, Reich Minister Speer, Ambassador Abetz, and Kaltenbrunner, the Chief of the Security Police. It is interesting to note that the preserved notes of said meeting state that (*NG–2296, Pros. Ex. 2627*):

> "As introduction *Reich Minister Dr. Lammers* reported concerning several applications submitted by the Plenipotentiary General for Labor Allocation. Their purpose is to bring about the increase of labor allocation in Germany which is absolutely necessary for the achievement of final victory. He limited the theme of the discussion to the effect that all possibilities should be screened which would make possible to cover the existing deficit of foreign labor. For instance, this would include the problem of reconstituting an acceptable price and wage differential between the Reich and non-German territories; however, the foreground *would be taken up by the clarification of the question how and in which manner increased compulsion could be used to procure labor for Germany.* Relative to this, one should find out how the executive could be reinforced. The Plenipotentiary General for Labor Allocation complains bitterly concerning its inefficiency. This might be done on the one hand by using pressure on foreign governments, and on the other, by enlarging our own executive by an increased use of the Wehrmacht, of the police, or of other German agencies. *Thereupon, Reich Minister Dr. Lammers presents the Plenipotentiary General for Labor Allocation, Gauleiter Sauckel.*" [Emphasis supplied.]

It is also interesting to observe that the notes of said meeting indicate that it was—

"At the suggestion of Reich Minister Dr. Lammers, Gauleiter Sauckel indicated his willingness to list a certain program of requirements which he will coordinate with the interested parties and which thereupon are to be submitted to the Fuehrer for approval and legalization."

It appears further that on 21 July 1944 defendant Lammers caused to be circulated to the supreme Reich authorities in the occupied territories a Fuehrer decree relating to the total war effort which was made applicable to the Incorporated Occupied Territories. Said decree was cosigned by Dr. Lammers and Dr. Bormann. On said date, a supplementary decree was issued appointing Dr. Goebbels as Reich Plenipotentiary for Total War Effort, and which decree was cosigned by Goering and Lammers. The first of such decrees authorized the Reich supreme agencies and made public legal regulations and basic administrative orders, in agreement with the Reich Ministers and the Chief of the Reich Chancellery (Lammers), the Chief of the Party Chancellery (Bormann), and the Plenipotentiary for Reich Administration (Frick).

From the foregoing references to parts of the testimony adduced by the prosecution, the Tribunal is convinced that the defendant Lammers participated actively in the shaping of policy with respect to the slave-labor program, and that he took an active and vital part in the coordinating of the various Reich agencies in the carrying out of said slave-labor program.

With reference to the charge that Lammers participated in the execution of plans for the forcible seizure and impressment of young persons from the Occupied Eastern Territories without regard to age, sex, or work status, into the service of pseudo-military organizations, the evidence is ample to sustain such charge. It should be noted in this connection that on 29 March 1944, Lammers directed a letter to Mr. Rosenberg, the Reich Minister for the Occupied Eastern Territories, relating to the "general mobilization in Esthonia, Latvia, and Lithuania." In this letter Lammers states (*NG–1330, Pros. Ex. 2624*):

"Reichsleiter Bormann has sent me copies of his teletype messages to you and to Reich Commissioner Lohse of the 23 instant concerning the general mobilization in Estonia, Latvia, and Lithuania ordered by the Fuehrer, and yours and the Reich Commissioner's teletype replies of the 25th instant and *has requested me to deal further with the matter because it belongs to my sphere of competency.*

"I think it is advisable for you to mention the subject when you report next time to the Fuehrer. If you attach great value

to my previously contacting Field Marshal Keitel and the Reich Leader SS, I would ask you to let me know." [Emphasis supplied.]

Considerable other correspondence concerning this mobilization program, and involving Bormann, Rosenberg, Reich Commissioner Lohse, and Lammers, is in evidence. Such correspondence serves to corroborate and further establish that Lammers had an active and important role in the carrying out of such program.

The statements made by the defendant Lammers, to the effect that the labor problems were not within his sphere, and that part of the so-called slave-labor program was based upon legal recruitment, fails to clear him of blame for participation in the slave-labor program. His policy making role therein, and his active coordination of the various agencies engaged in the administration of such program, is so strongly established by the evidence that we must, and do, find defendant Lammers guilty under count seven.

STUCKART

Defendant Stuckart, in addition to the general charges made against all the defendants named in count seven, is also specifically charged with having participated in the formulation, drafting, and issuing of laws and decrees which regulated the wages and conditions of employment of slave labor, and with having determined, together with defendant Lammers, the respective priorities of labor recruitment drives. It is further alleged that Stuckart participated in the execution of plans for the forcible seizure and impressment of young persons from the occupied territories without regard for age, sex, or work status, into the service of pseudo-military organizations, through which program it is asserted that thousands of boys and girls, 10–15 years old, were conscripted and deported to the Reich to work in the German armament industry.

Evidence was introduced by the prosecution to show that Stuckart at an early date became conversant with the contemplated mass allocation of Poles to meet the labor shortage in the Reich. It appears from the evidence that at a meeting of the General Council for the Four Year Plan, held on 20 December 1939, which was attended by defendant Stuckart, State Secretary Backe made a report with respect to the labor situation in the Reich in which he stated in part as follows (*NG–1162, Pros. Exhibit 581*) :

"Although compulsory service measures are not to be resorted to generally, ways must be found of insuring that female labor from occupations related to agriculture, and part of the labor which will become available in industry will be directed into agriculture. In addition, as from January, 1,500,000 Poles must be allocated to areas of labor shortage, although they will constitute an added burden on the supply system."

It appears that in May 1940 defendant Stuckart was involved in the shaping of labor legislative policy, which would withhold certain benefits and protective provisions from Polish laborers who were engaged as German laborers. The incidents mentioned, however, do not constitute proof of the charges of participation in the slave-labor program, although they may show Stuckart's familiarity with the extent of the use of Polish labor in the Reich. The labor legislation mentioned, together with subsequent legislation in which Stuckart was involved, withheld from the Polish workers many benefits such as social security and overtime for Sunday and holiday work, which were accorded the German laborers. Such discrimination, however, it does not appear was especially directed at slave laborers, but against Polish laborers and others from occupied countries, whether they had come through voluntary recruitment or forcible conscription.

It appears that Stuckart attended a conference held by Sauckel on 21 November 1944 for the purpose of discussing wage regulations, which Sauckel indicated were necessary to increase the individual efficiency of the workers. Attendance at such a conference does not constitute such participation in the slave-labor program as to make the defendant guilty on that account. Such further suggestions and regulations as may be ascribed to Stuckart and cited as being discriminatory against foreign workers, because of differences of wages, withholding of certain benefits and privileges are not in themselves such implementations directed to the furtherance of the slave-labor program as to constitute criminal participation by defendant Stuckart therein and such as to render him guilty under this count.

Stuckart, however, is further charged with having participated in the bringing in of young people from the occupied territories into pseudo-military organizations, such as the SS Air Force Helpers, SS Trainees, SS Helpers, and Air Force Helpers, and he is accused of having been involved in the so-called Heu-Aktion matter, which is alleged to have been part of the same program. It is asserted that under such program thousands of boys and girls 10–15 years of age were conscripted and brought to work in the German armament industry.

The evidence adduced by the prosecution shows a number of documents relating to such program, which, however, were not written by Stuckart. Some of these documents refer to Stuckart's duties and tasks in connection with such program, such as the settling of jurisdictional disputes and reconciling differences of the different departments with respect to such program, but nothing appears to show that Stuckart took any affirmative action with respect to any requests that may have come to him with respect to said program. We consider the evidence with respect thereto as not establishing beyond reasonable doubt Stuckart's alleged participation in such program.

We find defendant Stuckart not guilty under count seven.

RITTER

In addition to the general charges made against all the defendants named in count seven, defendant Ritter is specifically accused of having supported the conscription and deportation of workers to Germany from satellite governments and others dominated by Germany. It is asserted that his participation with other defendants in the slave-labor program included securing the enactment of compulsory labor laws for occupied and satellite countries, conducting negotiations and bringing pressure upon these governments to send workers to Germany, urging military commanders in the occupied territories to fill manpower quotas, giving spurious legal advice and justifications to German authorities, defending or concealing the character of the labor program from the inquiries of neutral states acting as protecting powers, and sanctioning the use of prisoners of war in war operations.

The evidence, as introduced against defendant Ritter to sustain the charges in this count, consist for the most part of a series of reports and other communications, relating to some aspects of the conscription of labor from the occupied countries. The majority of these, however, were not addressed to Ritter. In some instances he was put on the distribution list. The most that can be gathered from such documents is that he may have received knowledge of some aspects of the program under consideration. Such reports, however, it does not appear resulted in any affirmative act in furtherance of the slave-labor program by defendant Ritter.

One documentary exhibit, greatly relied upon by the prosecution to establish Ritter's guilty participation in the slave-labor program, is an exhibit relating to the contemplated seizure of Dutch nationals for German labor. It appears that this exhibit consists of a telegram, dated 24 April 1943, from Ritter to the

political division of the Foreign Office, advising such office of the text of a public notice approved by the Fuehrer, relative to the reinstatement of the members of the former Dutch army as prisoners of war. Such telegram gives some of the apparent reasons for such decision and notice. It is significant, however, that the evidence does not show that Ritter actually participated in the formulation or the making of the decision leading to such notice. It does appear that he transmitted the text of the notice and decision to the political department. The Tribunal does not find, from such circumstances, such participation in the formulation or furtherance of the slave-labor program as to render defendant Ritter guilty of the charges under this count.

The Tribunal finds defendant Ritter not guilty under count seven.

VEESENMAYER

In addition to the general charges in count seven made against all the defendants named therein, the defendant Veesenmayer is specifically accused, with other defendants, of having supported and effected transfers and deportations on a large scale of inhabitants of satellite governments and others dominated by Germany. He is accused of having participated in the slave-labor program by assisting in the procurement of compulsory labor laws for occupied satellite countries, conducting negotiations, and bringing pressure upon these governments to send workers to Germany, urging military commanders in the occupied territories to fill manpower quotas, giving "legal" advice and justifications to German authorities, defending or concealing the character of the labor program from the inquiries of neutral states acting as protecting powers, and sanctioning the use of prisoners of war in war operations.

In our treatment of the charges against Veesenmayer in count five, his activities in Hungary as referred to in the charges under count five, are gone into in some detail. A considerable amount of the testimony introduced with respect to count five and discussed by the Tribunal in connection with its treatment of such count is also relevant in count seven. It will not, therefore, again be detailed at length in connection with count seven.

It appears from the evidence that on 14 April 1944 Veesenmayer, the German Minister and Plenipotentiary of the Reich in Hungary, sent a teletype designated as "top secret" to von Ribbentrop advising as follows (*NG–1815, Pros. Ex. 1808*):

> "During yesterday's discussion Sztojay gave me the binding promise that up to the end of April at least 50,000 Jews fit for

work will be placed at the disposal of the Reich by Hungary. Practical measures are already in progress in the form of a drive already started by the SD and Hungarian police. He says that the Regent has also agreed to it and that Honved and the Ministry of the Interior were willing to cooperate. At the same time all Jews between the ages of 36 and 48, who had hitherto not yet been liable to labor service, will be registered and drafted. Thereby and through other drives already envisaged, it should be possible to place another 50,000 Jewish laborers at the disposal of the Reich during the month of May and to increase the number of Jews organized in labor battalions in Hungary to 100,000–150,000 at the same time."

It appears further that such information was in a few days thereafter transmitted to the Reich Security Main Office. It further appears that on 15 April 1944 Veesenmayer sent a wire to the Foreign Office stating (*NG–2191, Pros. Ex. 1809*):

"Upon my demand addressed to Minister President Sztojay and accepted by him to place at disposal for work in Germany 50,000 Jews until the end of this month, I received today from the Honved Ministry the information that 5,000 Jews would be placed at disposal forthwith, and after that continuously every 3–4 days, a further 5,000 until the number of 50,000 is reached.

"Will agree upon the details of transportation with Obergruppenfuehrer Winkelmann and may send further report in this respect. Ask however even now for earliest instruction to what place in the Reich transport should be directed."

On 19 April and 21 April 1944 it appears that Veesenmayer sent telegrams to von Ribbentrop reporting wholesale arrests of Jews, and it is to be noted that special reference is made therein to one Dr. Bence, it being stated that (*NG–2060, Pros. Ex. 1810*):

"Bence has injured the German interests in every conceivable way. By means of certifying false results of medical examinations he managed to achieve that numerous Jews were liberated from labor service."

On 20 April 1944 Veesenmayer reported to the German Foreign Office that 10,000 Jews were ready for deportation and requested that transfer be begun as quickly as possible. It is indeed significant that on 27 April 1944 Ritter advised von Thadden, Legation Councillor, that information had been received from the Chief of the Security Police and the Security Service that it would be impossible to accept 50,000 Jews for "open labor assignment in

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the plants of the Reich," but that, on the other hand, there is no objection to placing the Hungarian Jews into Reich labor camps which are under the control of the Reich Leader SS. It is to be noted here again that the maintenance of labor camps under control of the SS was one of the regular operational features of the Reich slave-labor program.

The evidence discloses that on 8 May 1944 Veesenmayer sent a secret telegram containing a report for distribution to the officials of the Reich Foreign Ministry and other officials, which report stated (*NG–2059, Pros. Ex. 1816*):

"During the conference held on 1 May when the Organization Todt, the Plenipotentiary General for the Allocation of Labor, Security Police, and Wehrmacht were represented, it was decided that in the future all requirements of Hungarian workers (Jews and non-Jews) for allocation in Hungary were to be forwarded to the representative of the Todt Organization with the Honved Ministry; the latter will maintain close contact with our representative of the Plenipotentiary General for the Allocation of Labor with regard to the question of non-Jews.

"In order not to jeopardize urgent military projects by the planned deportation of Jews from Hungary it is intended to increase the 210 companies of the Jewish labor service hitherto existing to 575. In this way approximately 150,000 Jews from the labor service would be exempt from the evacuation measures.

"Security Police has no objection that these Jews from the labor service remain in Hungary, providing they are housed in concentration camps and guarded by the constabulary. Negotiations on this matter are currently being carried out.

"The 100,000 Hungarian workers required by the Todt Organization for labor allocation in the Reich would have to be requested from the SS Main Administrative and Economic Office (SS Gruppenfuehrer Gluecks), which is in charge of Jews to be deported from Hungary."

Some idea of the extent of the slave-labor program in Hungary is revealed by a report of von Thadden, Legation Councillor, dated 25 May 1944. In such report he stated in part as follows (*NG–2980, Pros. Ex. 1817*):

"* * * that up to the noon of the 24th about 116,000 Jews had been deported to the Reich. Approximately 200,000 more are assembled and await their deportation. They were mostly Jews from the northeastern parts of Hungary. In addition

to this concentrations have been effected in the south, southeast, and southwest of the country in a border zone 30 kilometers wide. On 7 June concentration in the provinces north and northwest of Budapest will start. It is estimated that there will be about 250,000 Jews. At the same time the concentration in ghettos will be completed in the parts of the country south of Budapest. By the end of June they hope to be able to begin the concentration of the Jews living in Budapest. They believe to round up about 1 million Jews (possibly even more), one-third of whom should be able to work and will be taken over by Sauckel, the Organization Todt, etc., in Upper Silesia. Only about 80,000 Jews able to work will remain in Hungary under Honved guard in order to be employed in the Hungarian armament industry. The entire operation is to be concluded by the end of July (including deportation)."

It appears that on 26 May 1944 the same von Thadden made a more formal report of what he had learned in Budapest, which report was apparently sent to the Foreign Office and others. The following excerpts from said report are noteworthy (*NG–2190, Pros. Ex. 1818*):

"The Hungarian Government has agreed to the deportations to the eastern territories of all Hungarian citizens who, according to Hungarian law, are considered to be Jews. Only 80,000 Jews will be retained who will be assigned to work in Hungarian defense factories and who will be guarded by the Hungarian Army.

* * * * * * *

"According to present information, about one-third of the Jews deported are able to work. Immediately after arrival at the concentration camp Auschwitz they will be distributed to the agencies of Gauleiter Sauckel, the Organization Todt, etc. Several organizations have sent representatives to Berlin for the purpose of having Jewish workers assigned to them. The agencies of the Reich Leader in Budapest, however, do not even discuss these matters, but send these representatives back to their stations with the simple answer that only the SS Wirtschaftshaupamt in Berlin is authorized to handle these requests."

It appears that on 30 June 1944 defendant Veesenmayer sent a telegram from Budapest to the Foreign Office reporting that 381,661 Jews had been deported and that further deportations were pending. This report stated in part (*NG–2263, Pros. Ex. 1821*):

"Simultaneously small special actions in suburbs of Budapest as preparatory measures have started. Furthermore, a few small special transports with political Jews, intellectual Jews, Jews with many children, and especially skilled Jewish workers are still on the way."

The evidence discloses that on 7 July 1944 Veesenmayer reported from Budapest to the German Foreign Office that the Ministerial Council had reached the conclusion that "Polish Jews should be treated according to regulations for Hungarian Jews," and that "the bulk of Polish Army and civilian refugees will be assembled in camps and heavily guarded. Polish refugee labor will be allocated in a body to industry and agriculture and kept under guard."

Under date of 23 November 1944 defendant Veesenmayer reported from Budapest to the Bureau Reich Foreign Minister that he had (*NG–4987, Pros. Ex. 3717*)—

"Informed Szalasi today in accordance with your instructions. In spite of technical difficulties he is willing to speed up evacuation of Budapest Jews energetically; he emphasizes, however, that a large portion of male Jews fit for labor service have already been evacuated, Jewish females fit for labor service are being evacuated, whereas the remainder is composed of males and females unfit for labor service and * * * who have ceased to be a serious political danger. However, he will see to it, that the wish of the Reich Foreign Minister will be to the largest possible extent fulfilled by repeated combing-out drives."

The foregoing are references to but a portion of the evidence adduced by the prosecution to prove defendant's participation in the slave-labor program. A portion of his own testimony with respect to this matter should also be noted. On 23 July 1948 in the course of being examined before the Tribunal with respect to Jews in Hungary the defendant, after admitting that he considered them dangerous to the war effort, said (*Tr. p. 13455*):

"However, I was of the fundamental opinion that these men should work, and even if possible should work in a way that contributed to our war effort."

The Tribunal is of the opinion that the evidence establishes beyond reasonable doubt that defendant Veesenmayer was in a substantial degree responsible for obtaining consent of the Hungarian Government, dominated as it was by Germany, to the forcible conscription and deportation of workers to Germany, and that he "supported and effected such transfers and deportations on a large scale." The efforts made to minimize the author-

ity and activities of the defendant in connection with such slave-labor program are squarely in conflict with impressive and substantial proof to the contrary.

The Tribunal accordingly finds defendant Veesenmayer guilty under count seven.

BERGER

In addition to the general allegations made against all the defendants named in this count, the defendant Berger is specifically accused of having, together with Lammers and Stuckart, participated in the formulating, drafting, and execution of laws and decrees for regulating the wages and conditions of employment of slave labor. He is also specifically accused of having participated in the planning and execution of the enslavement and subsequent deportation of the civilian population of the Occupied Eastern Territories of the Reich. It is asserted that Berger recruited military and police battalions for the purpose of effecting such conscriptions and deportations. It is specifically asserted that Berger, in cooperation with defendants Lammers and Stuckart, participated in the execution of plans for the forcible seizure and impressment of young persons, without regard to sex or work status, from the Occupied Eastern Territories into the service of pseudo-military organizations variously known as SS Air Force Helpers, SS Trainees, SS Helpers, and Air Force Helpers. It is asserted that the so-called Heu-Aktion was a part of the same program whereby thousands of boys and girls 10–15 years of age were conscripted and deported to the Reich to work in the German armament industry. It is further alleged that the mobilization of labor of prisoners of war was organized by Berger in cooperation with Pohl, Chief of the SS Main Economic and Administrative Department. Not all of the allegations of count seven as made against Berger are sustained by the evidence.

It was, however, clearly established that the defendant Berger was closely identified with the forcible conscription program in the Occupied Eastern Territories. A part of such program was the infamous Heu-Aktion, a program for conscription of children from the territories in the East as they were evacuated by the Reich forces, following the retaking of such territories by the Allies. An order for the institution of the Heu-Aktion program was signed by the notorious Rosenberg, Plenipotentiary for the Occupied Eastern Territories, who was later tried and convicted by the IMT. It appears indisputably that the defendant Berger was instrumental in the formulation of the youth conscription program. The Heu-Aktion had its beginning in a meeting held

in June 1944 where Berger was represented by his personal adviser, one Brandenburg, and one Nickel, as representative of the Ministry for the Occupied Eastern Territories. At such meeting, attended by other prominent officials, including the Chief of the Hitler Youth War Service Commandos of the Army Group Center, the fate of thousands of alien children was decided for the benefit of the German war effort. This program contemplated the separation of these children from their parents. The use of compulsion was contemplated. It appears that at the conclusion of such conference Berger's personal adviser agreed to secure a decision from the Ministry within a few days. Further and convincing evidence was introduced to show that Berger's influence in the prosecution of this indefensible program of conscription of children was repeatedly and aggressively exerted. That such program was effected is clearly established by a report submitted by said Nickel on 1 August 1944 which report states in part (*NO–3038, Pros. Ex. 3390*):

> "It was therefore intended to take 40,000 children in the ages from 10 to 14 years to the Reich for placement in training camps for the German armament industry. The preparations for this were concluded toward the beginning of June and the first transports got on the way. 2,500 could still be brought to the Reich, they are now already employed with the Junkers Works."

This same report reveals some of the methods employed in carrying out of this children conscription program.

> "Toward the beginning of the year 1944, children's villages were established in the army's rear echelons. The able-bodied inhabitants of a number of villages immediately behind the front line, who were particularly endangered by the partisan situation, were concentrated in labor battalions which were permanent units of the front line troops. The remainder of the adult population, made up of those who were incapable of working, were deported to the enemy; the children up to the age of 14 years were, under German leadership, concentrated in a children's village. In the village itself an extremely small detachment of German leadership personnel was in charge of security, order, and education and, beyond, of such production as could be carried out also by children (horticulture, raising of domestic animals, home work, etc.). Here are the most important results.
>
> "(a) The wide area around the children's village was free of partisans.

"(b) The German troops had absolute control over the adult personnel in the labor battalions.

"(c) At the time when changes occurred in the front line the evacuation was most simple, because only the children's village had to be moved; the population followed then willingly."

A subsequent report is in evidence giving the results obtained in such program of youth conscription. This report shows assignments to which boys and girls were committed in armament industries and also to various pseudo-military organizations referred to in count seven. It is indeed significant that on 16 June 1944 one Straube, personal adviser to Berger, directed a request to Nickel on behalf of Berger which states in part as follows (*NO–338, Pros. Ex. C–212*):

"Obergruppenfuehrer Berger wishes 100 selected young people to be withdrawn in connection with the Heu-Aktion. These are to be put at the disposal of Walther Arms Factory in Zella-Mehlis. I beg you to take this into consideration from the beginning and let me know on what date we may count on having these young people assigned. The affair is urgent as the Obergruppenfuehrer has promised to have it done."

This document refutes the claim of the defendant that he was not involved in the recruitment of juveniles through Heu-Aktion.

The recruitment of juveniles, however, was not confined to children between the ages of 10 and 15 for industrial purposes, but simultaneously a program for recruiting them for several pseudo-military organizations was going on. It appears that on 31 May 1944, a Mr. Straube, hereinbefore referred to as Berger's adviser, in a file note reveals the results of a conference between Berger and other Reich officials with respect to the recruiting of Latvian Air Force Helpers, ostensibly on a voluntary basis but with the proviso that if the "7,000 fixed cannot be met by voluntary recruiting, the balance is to be supplied by local administration." It appears that for such pseudo-military organizations, Berger did not hesitate to take recruits of an extremely tender age, for in a communication dated 26 June 1944 to the Reich Ministry to the Occupied Eastern Territories he states (*NO–1877, Pros. Ex. 3387*):

"1. The question of Air Force Helpers (Luftwaffenhelfer) gets to be of much greater importance than originally suspected. To be pushed under all circumstances. Especially the affair in Lithuania is to start and finish with all means.

"2. The transfer (Uberfuehrung) of the racially well-fitted

boys beginning at the age of 12, and eventually, in the case of very suitable boys, for age of 10, from the areas White Ruthenia, North Ukraine, to accelerate with all means. Great tasks called upon by the Fuehrer. Preparatory conferences to be held now."

The evidence indicates that this youth conscription program was in the main compulsory, although the defendant denies this. It is to be noted that it was understood that if the voluntary recruitment failed, the balance is to be supplied by the local administration. That Berger was the motivating and responsible force back of the conscription of alien children and youth for the benefit of the Reich seems to be indisputably clear from the contents of a document which defendant admits he signed. This is a memorandum dated 6 April 1944 for distribution among all members of his political directing staff. Such document states (*NO–1713, Pros. Ex. 3362*):

"The matter of the Air Force Helpers has taken such an unfavorable development that the prestige of the Reich East Ministry came near to being severely damaged; that is, we were almost placed in a position of sharpest opposition to the policies of the Fuehrer. I therefore order:

"(1) Agreements of any kind which are not endorsed by me, are invalid.

"(2) I forbid any direct reports on this matter without my approval to the Reich Minister.

"(3) The total responsibility for these recruiting measures (posters, handbills, etc.) I transfer to Hauptbannfuehrer Nickel. He will in the true sense of the word vouch with his life for a proper settlement of this problem.

"(4) On the future application of the educational and provisional possibilities laid out by the Reich East Ministry for this operation, further orders will be given after the officials concerned will have been consulted."

The explanation made by defendant that the execution of this document was in fact beyond his authority and was done out of vexation on his part is an unimpressive and unconvincing explanation, especially in view of the many other items of evidence to the contrary.

That the recruiting drive under consideration was in fact carried out on a large scale is indisputably established by a report of Nickel under date of 19 October 1944 to Straube, the subordinate of Berger. Such report shows that after May 1944 thousands of youth had been recruited for the air force, and for the armament industries, and other war work.

The Tribunal is of the opinion that as an active participant in the planning and carrying out of the youth and children conscription program referred to, Berger became a criminal participant in the Reich slave-labor program. The evidence with respect to slave labor indicates the further involvement of Berger in the slave-labor program. It appears that in June 1943 Berger received a so-called top secret order from Himmler with respect to a program of enslavement of the male population of the northern Ukraine and central Russia. The order was to be passed on to Rosenberg, the Plenipotentiary for the Occupied Eastern Territories. The following passages of such order are significant (*NO–2034, Pros. Ex. 3354*):

"1. The Fuehrer has decided that the partisan-infested areas of the northern Ukraine and central Russia are to be evacuated of their entire population.

"2. The entire able-bodied male populaltion will be assigned to the Reich Commissioner for Allocation of Labor [Reichskommissar fuer den Arbeitseinsatz], in accordance with arrangements yet to be decided upon, under conditions applicable to prisoners of war, however.

"3. The female population will be assigned to the Reich Commissioner for Allocation of Labor [Reichskommissar fuer den Arbeitseinsatz] for employment in the Reich.

"4. A part of the female population and all orphaned children will enter our reception camps [Auffangslager].

"5. In accordance with an agreement yet to be reached with the Reich Minister for Food [Reichsernaehrungsminister] and the Minister for Occupied Eastern Territories [Minister fuer die besetzten Ostgebiete], the Higher SS and Police Leader [Hoehere SS- und Polizeifuehrer] are to arrange, as far as is practicable, for the farming of the areas evacuated of their population; to have them planted, in part, with Kok-Saghyz,* and to utilize them for agricultural purposes, as far as possible. The children's camps are to be located at the border of these areas, so that the children will be available as manpower for the cultivation of Kok-Saghyz and for agriculture."

The testimony of Berger was to the effect that he was not in favor of such an announced program and that, in fact, the mass evacuation provided for in Himmler's order was not carried out. In view of convincing evidence to the contrary, however, the Tribunal is obliged to reject the explanation and defense thus given by Berger.

It appears that on 14 July 1943 we find defendant Berger addressing a letter to Himmler [memorandum for the record]

* A plant of the dandelion family used for the production of rubber.

concerning the labor resources untapped in Lithuania. In such letter Berger asks Himmler "for a decision" along with other consideration of the following (*NO–3370, Pros. Ex. 2376*) :

> "Lithuania has not been worked upon at all as far as labor is concerned. The police forces in that district are too weak, however, and say that in case labor is conscripted by force there would be large partisan gangs. I would suggest that, after the termination of the actions in central Russia and northern Ukraine, a strong action for labor conscription in Lithuania is initiated."

It is to be observed in this connection that this request on the part of Berger was, under date of 20 August 1943 accepted by Dr. Rudolf Brandt, Himmler's adjutant, as follows (*NO–3304, Pros. Ex. 2377*) :

> "The Reich Leader SS has noted that sufficient forces for the labor conscription in Lithuania will be allocated at the proper time when the fighting of partisans and other conditions permit this."

With respect to the claim that the evacuation program as announced by Himmler was not carried out, it should be noted that defendant's own witness, Braeutigam, testified (*Tr. p. 6575*) :

> "* * * as it well known, in the autumn of 1943 the Ukrainians had already been evacuated to a large extent * * *."

It is also significant in this connection that in the months following the institution of such evacuation program the evidence discloses various reports were made to Berger and others concerning the forcible deportation and mistreatment of Ukrainians who were being shipped to the Reich for slave labor.

The prosecution has contended that the defendant Berger is also responsible for the employment of prisoners of war in work related to war operations, for instance, such as armament production. It is pointed out that this defendant was Chief of Prisoner-of-War Affairs from 1944 to 1945. There is no question but that there were instances of the employment of war prisoners by Germany in war industries and war operations during the war years. The evidence is not clear that in any of these instances such employment was carried out or was engaged in through the initiative and cooperation of the defendant Berger. The Tribunal does not feel that such particular charge has been proved beyond reasonable doubt. However, from the evidence adduced with respect to other charges of this count, and as hereinbefore discussed, the Tribunal finds that the defendant Berger is guilty under count seven.

Defendant Darré, as Reich Minister of Food and Agriculture, is specifically accused in this count of having directed and supervised staffs which regulated the entire agricultural economy of Germany and carried out and controlled the individual conduct of millions of German farmers and their employees. It is asserted that shortly after the invasion of Poland, Darré sought a million or more Polish workers for use on German farms and that through his representatives in the General Council of the Four Year Plan he brought pressure upon Hans Frank, Governor General for occupied Poland, to satisfy such labor demands, suggesting forcible and violent measures for recruitment where necessary. It is alleged that deputies of Darré were dispatched to the Government General to guarantee that the deportations would be carried out promptly. It is further asserted that during the war years the defendant dispatched demands to the Government General for the prompt carrying out of deportations. It is further alleged that during such years the demands of the defendant Darré for more slave labor were unremitting and that hundreds of thousands of persons were deported for the use of German agriculture. It is asserted that defendant Darré advocated a ruthless treatment of slave laborers employed by German farmers in full accordance with the racial precepts and standards of national socialism. It is further alleged that Darré, with knowledge of the actual treatment which was being meted out to slave laborers, directly and through his agencies protested against leniency in the treatment of these "racial enemies" and transmitted SS and Nazi Party instructions and warnings to German farmers against a humane feeling toward the slave workers, and recommended corporal punishment to discourage laziness or refractory attitude, and suggested that the facilities of the SS and Gestapo be used to maintain good discipline. It is also asserted that defendant was responsible for giving semistarvation rations to foreign workers and prisoners of war, and that he was further responsible for discriminatory classification along racial lines with resultant detriment to Poles, Jews, and Russians, both civilians and prisoners of war. It is finally asserted that as a result of this policy large numbers of foreign workers were starved to death, and others suffered and died from diseases induced by nutritional deficiencies, while others suffered and are suffering from permament physical impairments as a result of such treatment.

The findings of the IMT and the evidence in this case leave no doubt as to the truth of the charges that great numbers of foreign workers, particularly Poles, were forcibly deported to Germany and used for agricultural work in Germany. It is also clear

that the defendant Darré, at an early date following the beginning of the war, emphatically made it known in competent higher officialdom in Germany that there was urgent need for more agricultural labor if food production was to be efficiently and satisfactorily carried out, and that he indicated that Polish workers should be procured for this purpose. This in itself, however, does not indicate that defendant Darré participated in the establishment of forcible recruitment of agricultural laborers from Poland. It is clear from the evidence in this case that it had been common practice prior to the war to employ great numbers of Polish workers in German agriculture. It also appears from the evidence in this case that, under date of 3 January 1940, the requirements for agricultural laborers were made known at a session of the General Council for the Four Year Plan through State Secretary Backe, who reported on the state of agricultural production and the requirements for labor. It is interesting to note that the minutes of said meeting state in part as follows (*NG–1162, Pros. Ex. 581 and Ex. 2522*):

> "Although compulsory service measures are not to be resorted to generally, ways must be found of insuring that female laborers from occupations related to agriculture, and part of the labor which will become available in industry will be directed into agriculture."

It does not appear that at that time there was any demand for forcible recruitment by the agricultural authorities nor that any action was taken by the General Council of the Four Year Plan for such forcible recruitment.

It does appear that from time to time discussions were had with Governor General Frank of Poland with respect to the allocation of Polish labor. It appears from the evidence that during such sessions suggestions were made, sometimes by Frank, that compulsory measures might have to be resorted to. There is no satisfactory proof that defendant Darré ever suggested forcible recruitment as a means to secure the needed laborers, nor that he was actually instrumental in establishing a program of forcible recruitment of Polish workers for German agriculture. It is true that representatives of agriculture sometimes attended conferences with Frank. There is no convincing evidence that any one of these were ever instructed by Darré to press for forcible recruitment to meet the agricultural demand for labor.

The defendant's testimony to the effect that his activities in the actual methods of procurement of labor were limited, is not irreconcilable with the prosecution's evidence. In this connection we call attention to the statement of Erwin Lorenz who was a

Ministerial Dirigent in the Reich Ministry of Food and Agriculture, and who attended conferences between Governor General Frank and officials of the Reich Ministry of Food and Agriculture and the Reich Ministry of Labor. An excerpt from said Lorenz's statement follows (*NID–12375, Pros. Ex. 2526*):

> "The section 'Labor' of the Reich Ministry of Food and Agriculture which was headed by me, had to deal with all questions pertaining to the jurisdiction of the Reich Ministry of Labor, among them the question of labor requirements, from the point of view of food economy. In all these matters my section could only advise the Reich Ministry of Labor, submit suggestions, convey wishes, and request that they be considered as far as possible. On the other hand the Reich Ministry of Food and Agriculture was not itself empowered to issue any regulations, orders, etc. on these matters. In order to ascertain the wishes and requirements of food and economy as they arose, it requested the attitude of the Reich Food Estate before making a decision in important matters. Important applications to the Ministry of Labor were made by me in writing. The correspondence was drafted by me or by my assistant and, according to its significance, either signed by me or forwarded for signature to the division chief, Ministerial Director Harmening, to State Secretary Backe, or Minister Darré. All important requests for labor requirements were principally forwarded for signature to the State Secretary or to the Minister. In less important matters I got in touch with Ministerialrat Timm of the Reich Ministry of Labor."

Nowhere does it satisfactorily appear that Darré urged forcible recruitment or that he could have altered the situation, had it come to his attention. Some of the prosecution witnesses have assumed or indicated a belief that Darré was advised of all plans and operations involving recruitment of Polish workers, but such conclusions are not adequately supported by factual evidence. The charge that Darré was instrumental in imposing harsh measures against foreign workers employed in agriculture in Germany is not adequately established by the evidence.

The Tribunal is of the opinion that the charges against Darré as contained in count seven are not proved beyond a reasonable doubt, and it, therefore, finds defendant Darré not guilty under such count.

KOERNER

It is specifically alleged that defendant Koerner, during the period from September 1939 to May 1945, was permanent deputy

to Goering as General Plenipotentiary for the Four Year Plan, charged with the task of representing Goering in all current activities of the Four Year Plan, which, among other things, was concerned with the recruitment and allocation of manpower. It is alleged that Koerner was active in the formulation and execution of the program for forced recruitment, enslavement, and exploitation of foreign workers, and the use and exploitation of prisoners of war in work relating directly to war operations. It is asserted that he, as chairman of the General Council for the Four Year Plan during the period from December 1939 to 1942, dealt with questions of labor conscription and allocation, including the use of forced foreign labor. It is alleged that the General Council for the Four Year Plan was charged with the task of planning and supervising the work of the Four Year Plan departments and that its influence, under the leadership of defendant Koerner, was important in the slave-labor program. It is charged that Koerner, during the period from April 1942 to April 1945, was a member of the Central Planning Board which had supreme authority for the scheduling of production and the allocation and development of raw materials in the German war economy. It is charged that the Central Planning Board determined the labor requirements of industry, agriculture, and all other sections of the German economy, and made requisitions for and allocations of such labor. It is alleged that Koerner had full knowledge of the illegal manner in which foreign workers were conscripted and prisoners of war utilized to meet such requisitions, and that he knew of the unlawful and inhumane conditions under which they were exploited. It is charged that he attended the meetings of the Central Planning Board, participated in its decisions, and in the formulation of the basic policies with reference to the exploitation of such labor. It is further charged that defendant Koerner held numerous key positions and was one of the leading figures in the Hermann Goering Works, a vast, Reich-owned, industrial empire, the activities of which, among other things, ranged over nearly every branch of mining and heavy industry, and also in many branches of armament production. It is asserted that the Hermann Goering Works used many thousands of foreign laborers, prisoners of war, and concentration camp inmates, and that in the course of the use of forced labor in such works the workers were exploited under inhumane conditions with respect to their personal liberty, shelter, food, pay, hours of work, and health. It is asserted that compulsory means were used to force these workers to enter or remain in involuntary servitude, and it is asserted that prisoners of war were used in work having a direct relation to war operations, and in unhealthful and dangerous

work. It is asserted that Koerner was active in recruiting slave labor, including prisoners of war, for these enterprises.

The evidence adduced against defendant Koerner in support of the charges in this count is so voluminous that a detailed discussion thereof is not practicable in this opinion. It will suffice, however, that we specifically call attention to some parts of the evidence, and that we quite generally comment on the character of the whole.

The evidence has established that during the times in question defendant Koerner held high positions in the Reich government on the policy making level, and that he held important positions in the Reich-owned Hermann Goering Works, an industrial concern of vast scope and of great importance in the industrial life of Germany. From the evidence it appears that in such capacities he became involved in the formulation and execution of the slave-labor program to an extensive degree. The defendant, at an early date, was made Goering's deputy in the Four Year Plan, Goering stating in the decree establishing such Four Year Plan that "in all current business concerning the Four Year Plan I shall be represented by State Secretary Koerner." The evidence abundantly shows that to a great extent the Four Year Plan was inextricably bound up with the execution and furtherance of slave labor, and that Koerner played an important role in connection therewith as Goering's deputy.

It appears that in December 1939 Koerner became Goering's deputy in the General Council of the Four Year Plan. It appears that it was Koerner who most frequently presided over the meetings of such General Council. Such General Council was an extremely important organization including practically all the Ministries, as well as General Thomas of the armed forces High Command. Goering's decree creating such General Council stated (*NG–1177, Pros. Ex. 461*):

> "The function of the General Council for the Four Year Plan is the current distribution of the tasks of the individual departments, and the receipt and discussion of the members concerning the state of the work of the individual departments, including the instigation of the necessary measures."

The decree stated that the members of such General Council will be the State Secretaries Koerner, Neumann, Landfried, Backe, Syrup, Kleinmann, Alpers, and Stuckart; and the Reich Commissioner for Price Control; and Major General Thomas as Chief of the War Economy Office of the OKW; and a representative for the Fuehrer's deputy. The decree stated, "I take the chair in the General Council. My deputy will be State Secretary Koerner."

It appears that at meeting after meeting of such General Council presided over by Koerner, matters relating to the conscription and allocation of labor were discussed and planned. The matter of forcible conscription of such labor in the occupied territories was repeatedly the subject of discussion and action. For instance, on 14 February 1940 a meeting of the General Council for the Four Year Plan took place at which defendant Koerner was present and at which he presided. The minutes of said meeting indicate that State Secretary Backe stated (*NG–1408, Pros. Ex. 977*):

> "If, as it appears likely, there will be in the government difficulties at the labor recruiting offices in the recruiting of civilian Poles, it will be unavoidable to give the occupation army authority and directive to cause by force the necessary number of workers to be transported to Germany."

We also call attention to the eighth meeting of the General Council for the Four Year Plan presided over by Koerner and held on 17 April 1940. The minutes of such meeting which were recorded by one Dr. Gramsch, who, in the trial of this case, was a defense witness in behalf of Koerner contains the following statement (*NID–15581, Pros. Ex. C–43*):

> "Owing to the increased resistance on the part of the Poles, the propaganda action in the Government General came to a standstill even after the transportation difficulties were removed. The only thing which can be done is to carry out a forced conscription by calling up certain age classes of Poles."

The defense of Koerner that the compulsion advocated by State Secretary Backe in the meeting of the General Council of 14 February 1940 was in fact opposed and never carried out does not appear to be true. The witness Gramsch who was present at said meeting and kept the minutes thereof, testified that there was in fact no opposition to Backe's proposal for compulsion.

In this connection it is to be noted that the IMT in its finding with respect to compulsory deportation of laborers from Poland said:*

> "By the middle of April 1940 compulsory deportation of laborers to Germany had been ordered in the Government General; and a similar procedure was followed in other eastern territories as they were occupied."

The foregoing evidence would seem to establish beyond doubt Koerner's knowledge of and participation in the slave-labor program, but we will briefly touch upon other roles played by the

* Trial of the Major War Criminals, op. cit. supra, volume I, page 244.

defendant Koerner in this nefarious program. In April 1942 Goering established the Central Planning Board, the decree creating it stating that same was set up (*NOKW–244, Pros. Ex. 2014*)—

"In order to secure priority for rearmament as ordered by the Fuehrer and to consolidate all demands made on the entire economic structure during the war, and also to provide an adjustment for nutritional security and for the potentialities of industry, that is, with respect to raw materials and production, I decree:

"1. A 'Central Planning' will be established within the framework of the Four Year Plan. It will be under my immediate command.

"2. Reich Minister Speer, Field Marshal Milch, and State Secretary Koerner, together, will take over the control of the 'Central Planning.'

"3. The 'Central Planning' will *encompass the entire economic structure and has among others the following tasks* * * *." [Emphasis supplied.]

And after enumerating tasks the decree continues:

"Insofar as in individual cases I have not preserved the power of decision for myself, the 'Central Planning' will make the final decision on its own authority by virtue of the powers vested in me." [Emphasis supplied.]

It will be noted that Speer, Milch, and defendant Koerner were the original members of such planning board. Funk, the Reich Minister of Economics, also became a member of such Central Planning Board over a year later. The findings of the IMT, as well as the evidence in this case, establish the criminal character and activities of the Central Planning Board. Funk, who became a member of such planning board (more than a year after Koerner), and Speer, were both convicted by the IMT. Pertinent herein are the following references made by the IMT in its judgment against Funk and Speer:*

"In the fall of 1943 Funk was a member of the Central Planning Board which determined the total number of laborers needed for German industry, and required Sauckel to produce them, usually by deportation from occupied territories. *Funk did not appear to be particularly interested in this aspect of the forced labor program, and usually sent a deputy to attend the meetings * * *. But Funk was aware that the board of which he was a member was demanding the importation of slave*

* Ibid., p. 306.

laborers and allocating them to the various industries under its control." [Emphasis supplied.]

Again speaking with reference to the meaning of the Central Planning Board the IMT states:*

> "*Speer knew when he made his demands on Sauckel that they would be supplied by foreign laborers serving under compulsion. He participated in conferences involving the extension of the slave-labor program for the purpose of satisfying his demands* * * *.
>
> "Sauckel continually informed Speer and his representatives that foreign laborers were obtained by force. At a meeting on 1 March 1944 Speer's deputy questioned Sauckel very closely about his failure to live up to the obligation to supply 4 million workers from occupied territories. In some cases Speer demanded laborers from specific foreign countries. Thus, at the conference 10–12 August 1942 Sauckel was instructed to supply Speer with 'a further million Russian laborers for the German armament industry up to and including October 1942.' At a meeting of the Central Planning Board on 22 April 1943 Speer discussed plans to obtain Russian laborers for use in the coal mines, and flatly vetoed the suggestion that this labor deficit should be made up by German labor."

With respect to the making of decisions in the Central Planning Board, Speer testified as follows when asked if he was chairman of that "office" (*3720–PS, Pros. Ex. 2263*):

> "The Central Planning Board was no office as such; it was a place where decisions were made. The Central Planning Board was not led by me but the decisions were made by three men in common, *Milch, Koerner, and myself*. After we took over the production department from the Ministry of Economics the fourth man, Funk, was added." [Emphasis supplied.]

From the evidence introduced it appears that from its inception in April 1942 to 7 June 1944 over fifty meetings of the Central Planning Board were held, and it appears that defendant Koerner was present in practically all of such meetings. For examples of subjects taken up and decisions made at such meetings we refer to the following:

1. The 21st meeting of 30 October 1942 (*R–124–C, Pros. Ex. 2276*), in which the participants agreed on using SS and Police forces and concentration camps as measures to intimidate slave laborers who claimed to be sick.

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* Ibid., pp. 331–332.

2. The 36th meeting of 22 April 1943 (*R–124–J, Pros. Ex. 2283*), in which plans were discussed for securing Russian laborers for use in coal mines and in which meeting Speer opposed the suggestion that this labor deficit should be made up by German labor.

3. The 54th meeting of 1 March 1944 (*R–124–O, Pros. Ex. 2288*), in which it became obvious that foreign laborers were being conscripted by force. It was at such meeting that Sauckel stated (*R–124–O, Pros. Ex. 2288*):

> "Out of the 5 million workers who arrived in Germany, not even 200,000 came voluntarily."

The defendant Koerner was present at all of the meetings here specifically referred to.

That the Central Planning Board played a prominent role in the execution and furtherance of the slave-labor program is indubitably clear. That Koerner participated therein as an active member of the Central Planning Board, present at most of its meetings, is likewise beyond question. Koerner's efforts to minimize his weight or activity in the Central Planning Board are not worthy of much consideration. It must be remembered that throughout, Koerner was deputy to Goering and that by reason thereof, his prestige and influence in the Central Planning Board or in any other council of Reich officials doubtless were considerable. Furthermore, the records of the meetings of the Central Planning Board indicate that he made himself heard when he so desired. It does not appear that he opposed the enslavement measures and activities discussed and acted upon by such Central Planning Board.

We will now briefly discuss one more role in which Koerner participated in the slave-labor program—that is, as an official in the Hermann Goering Works. Koerner was chairman of the Aufsichtsrat (supervisory board) of the Hermann Goering Works from its beginning until 1942 when a holding company of such concern, Reichswerke A.G. Hermann Goering, was established. In 1939 Koerner became chairman of its Aufsichtsrat and continued as such until 1942. In 1940, apparently because of the vast growth of these Reich-owned industries, they were organized into three blocks; one, the Montan including important iron ore mining, coal, iron, and steel plants, and a few armament plants—altogether a vast organization. Defendant Koerner became chairman of the Montan's Aufsichtsrat and continued in that capacity into 1942. It was stated in the course of the testimony of one of the defense witnesses that the duties of the Aufsichtsrat of which Koerner was chairman included "personnel" matters.

While no specific mention was made as to labor matters, we find that on 2 September 1941 defendant Koerner wrote to State Secretary Dr. Syrup in the Reich Ministry of Labor, requesting 10,000 Russian prisoners of war for the Hermann Goering Works. While the allocation of prisoners of war in this instance may not have been criminal, the request in this instance by Koerner indicates his involvement to a considerable degree in the question of labor matters insofar as the Hermann Goering Works was concerned. It is significant also that on 17 October 1941 one Meinberg of the Hermann Goering Works directed a communication to the same Dr. Syrup requesting him to inaugurate the forcible conscription of Czech labor on the ground that the Hermann Goering Works needed 1,500 Czechs. Other evidence discloses that a very considerable number of foreign workers, including prisoners of war, became employed in the Hermann Goering Works for the year 1941. Further evidence also discloses that from 1939 until the end of the war the Hermann Goering Works employed thousands of foreign civilian workers, who were often retained therein through compulsion. It further appears from the evidence that conditions under which these laborers were obliged to work and the treatment accorded them in many instances was cruel and brutal.

Supervisory positions of responsibility such as held by defendant Koerner in the Hermann Goering Works, coupled with actions actually taken by him, precludes our absolving him from blame for the slave-labor established and maintained in the Hermann Goering Works. As chairman of the Aufsichtsrat of Reichswerke A.G. fuer Erzbergbau and Eisenhuetten "Hermann Goering" from its beginning until 1942, as chairman of the Aufsichtsrat of the Reichswerke A.G. Hermann Goering from 1939 until 1942, and as chairman of the Aufsichtsrat of the Montan Block (Reichswerke A.G. fuer Berg- und Huettenbetriebe "Hermann Goering") from 1940 to 1942, his duties of management were obviously such as to have made him, in all probability, thoroughly cognizant of such an important and vital an element as labor conditions would be in industries of such magnitude and complexity as were these in the Hermann Goering Works.

The Tribunal finds defendant Koerner guilty under count seven.

PLEIGER

Defendant Pleiger is specifically accused of participation in the slave-labor program. It is asserted that he was the chairman of the Praesidium, the governing board of the Reichsvereinigung Kohle, commonly known as the RVK, an official agency for the

regulation of the entire German coal industry, which organization possessed wide powers and exercised important functions with respect to the procurement, allocation, use, and treatment of slave labor, including prisoners of war. It is asserted that Pleiger was the dominant figure in the RVK, the chief participant in the formulation and execution of policies designed to procure, enslave, and exploit labor. It is alleged that Pleiger, as head of the RVK, presented the manpower requirements of the coal industry to the Central Planning Board and urged the recruitment and allocation of great numbers of slave laborers to the coal mines. It is also alleged that he sought out and recruited foreign workers, prisoners of war, and concentration camp labor through the Third Reich and satellite governments and agencies, the German military forces, the SS, and elsewhere. It is also alleged that Pleiger held key positions and was one of the leading figures in the Hermann Goering Works; and that the Hermann Goering Works used many thousands of foreign laborers, prisoners of war and concentration camp inmates; and that such labor while employed in the Hermann Goering Works was subjected to exploitation under inhumane conditions with respect to their liberty, shelter, food, pay, hours of work, and health. It is asserted that repressive measures were used to force these workers to enter and remain in involuntary servitude, and it is asserted that prisoners of war were used in work having a direct relation to war operations, and in unhealthful and dangerous work; and finally, it is asserted that Pleiger was active in recruitment of slave labor, including prisoners of war, for the Hermann Goering Works enterprises. It is asserted that he made arrangements for joint enterprises between the SS and the Hermann Goering Works involving the use of concentration camp workers in such enterprises.

The evidence adduced by the prosecution and by the defense with respect to the charges in this count is very voluminous. Much time has been consumed by the Tribunal in consideration of both the documentary and oral evidence before the Tribunal. A detailed resume and discussion of all such testimony is not practicable here. Only such portions thereof as seems necessary to explain and justify the Tribunal's conclusion with respect to this count will, therefore, be specifically referred to in this opinion.

In our treatment of the charges against defendant Koerner under this count we discussed the establishment of the Central Planning Board, its membership, and its functions. We called attention to the part that such organization played in the carrying out of the slave-labor program.

Evidence introduced by the prosecution in the form of minutes of numerous meetings of the Central Planning Board establish clearly and indubitably that defendant Pleiger, as chairman of the Reich Association Coal, and as general manager of the BHO, and as chairman of the Vorstand of the Montan Block division of the Hermann Goering Works, repeatedly and aggressively pressed the Central Planning Board to supply these industries thus represented with labor. Pleiger himself testified in this proceeding in answer to a question as to who was invited to meetings of the Central Planning Board:

> "Whoever, as representatives of an industrial branch or of an economic group, had perhaps some importance in any of the decisions to be taken by the Central Planning Board."

In his own testimony the defendant denied that he ever made "demand" for labor from the Central Planning Board, but stated that he did "apply" for it. As illustrative of the manner of *applying* for labor, we refer to the minutes of the meetings of the Central Planning Board where such applications were made by Pleiger. It appears that at meeting after meeting of the Central Planning Board he wanted more laborers for mining and other industries. He knew at the time that such Central Planning Board was determining labor allocation from forcibly conscripted people of the occupied territories and from prisoners of war, in which latter case allocation was being made to employment in dangerous occupations and to work under conditions which made such employment a violation of the Geneva Convention.

It is to be noted that on 9 August 1948 the defendant in the course of testifying in his own behalf in response to a question, stated that in 1943 he heard for the first time that Sauckel was forcibly recruiting workers in the East. It was apparent that the defendant sought to have the Tribunal believe that such revelation had shocked the defendant. We cannot accept the testimony of the defendant with respect to such matter as being true. It appears that on 10 August 1948 the defendant testified that 90 percent of the workers in the BHO were Russian civilians, but declared that he did not know that any of them were forcibly recruited, this despite the fact that Pleiger himself was at the times in question general manager of the BHO. When, during cross-examination, he was shown an activity report of the BHO, dated 30 April 1942, which showed that Russian miners had been recruited in that area for the BHO in Nikopol through police coercion, the defendant admitted that the receipt of this report by him "was quite probable." It is also significant that one of the defendant's own witnesses, one Adolf Carlowitz, in testifying

on behalf of the defendant on 2 August 1948, stated that he had first learned about involuntary workers when he made a trip with Pleiger to Krivoi-Rog in September 1941, having learned that "the idea had come up to employ eastern workers in Germany, and these eastern workers were to be accommodated in special camps surrounded by barbed wire." He "reported this to Pleiger." He testifies that Pleiger objected strongly to "having assigned labor in this manner." (*Tr. pp. 14495–14496.*)

If any shock was ever felt by defendant Pleiger concerning the forcible recruitment of laborers it must have been short-lived for, aside from the testimony of defendant's witness Carlowitz, the record contains very little that can be construed as protest or objection to such form of conscription of labor. On the contrary, the record discloses that defendant Pleiger took positive action to apply compulsion in order to retain workers employed in industries in which he had an interest or to which his authority extended. Attention is called to a letter introduced in evidence dated 5 August 1943, signed by Pleiger, addressed to Sauckel, but also sent to Himmler and Kaltenbrunner by Pleiger. Such letter calls attention to the fact "that the eastern workers, Poles and also Ukrainians, were leaving their jobs in great numbers."

To remedy such situation the defendant Pleiger advises that as countermeasures, absolutely necessary, the following steps should be taken. The first three points stressed by defendant as "countermeasures" were then stated as follows (*NG–5701, Pros. Ex. 3788*):

"1. To make it possible to get hold of fugitives, the name of the plant, its Reich plant number, or the number of the labor office is to be stamped durably into the individual underwear and clothing of the eastern worker, etc. In addition each eastern worker is to be given a dog tag and a pass (work book) containing his picture. Both must indicate in figures which is the labor office dealing with his employment and where he is employed.

"The plan already considered of organizing a Reich card index with finger printing appears to me to be very inadvisable.

"2. The eastern workers have to confirm with their signatures that they were told to report immediately to the plant the loss of the dog tag and of the pass, and that the neglect to do that or the removal of the marks in the clothing is subject to severe punishment (concentration camp for a longer period).

"3. Eastern workers and Poles caught when trying to escape, and also Ukrainians escaped or not returned from their vacations, are to be taken back on principle to the plant which they had left without permission. An agreement of this sort is in

existence between the Reich Leader SS and the GBA (Plenipotentiary of Labor), however, it was not applied in regard to eastern workers, and to the others, evidently only rarely applied. Even if the place where they are caught is very distant from the place where they had their old job, the workers have to be taken back, and that has to be done for reasons of education in respect to the other eastern workers, and also in order not to reduce the road in case of a second escape."

Obviously the defendant had no qualms about retaining workers by force even though he may, in 1941, have had objections to involuntary conscription. The involuntary nature of the servitude imposed is, of course, wrongful, whether arising in the first instance from forcible conscription or whether arising from forcible retention in the employment. Furthermore, it appears that on 12 February 1943 Pleiger had sent a letter to Sauckel which also indicates that he was in favor of the application of force with respect to the recruitment and retention of Poles in the mining industry. We quote the following therefrom (*NG–5704, Pros. Ex. 3790*):

"Dear Party Member Sauckel,

"Referring to our telephone conversation regarding the use of Polish labor in the mining industry I wish to impress this matter upon you once again. As I already have told you in the presence of Reich Minister Speer, I have pointed out to the Fuehrer that the increase in production which the mining industry is asked to accomplish can be realized best by using young fresh Polish labor. In saying that I have emphasized that their allocation is the condition for drafting German miners into the Wehrmacht.

"I wish to ask you again to speed up the allocation of the Poles to the mining industry. In this respect it cannot be a question of recruiting individual men; two or three whole age groups, preferably those of 19–22 years of age, have to be drafted for 3 years to the mining industry.

"As I have already stressed in my discussions with General von Unruh, the objections that the Polish construction service would not have enough personnel for guarding them are not justified. *It is quite possible to organize the disciplinary care of the Poles by the mining industry itself, sufficient miners being on hand with a military record who can take over their guarding.*" [Emphasis supplied.]

In view of the fact that the defendant, in testifying in his own behalf and through testimony of other witnesses, has sought to

create the impression that he took a generally benevolent attitude toward laborers in the plants and industries subject to his authority, it is revealing to examine the minutes of a meeting of the Stahlwerke Braunschweig, a Hermann Goering Works foundry, held as early as 21 March 1940 and presided over by defendant Pleiger. This meeting, it appears, was attended by a number of important Hermann Goering Works officials. The minutes clearly justify the conclusion that Pleiger was a dominating force in the Hermann Goering Works, especially in the Montan companies of such concern. What is particularly pertinent in connection with our consideration of this count is that it is here shown that strong disciplinary measures were taken against Polish workers at that early date. The report of the meeting states in part (*NG–5709, Pros. Ex. 3792*):

"Mr. Schiegries complains about the Polish workers who are often shirking or simply report sick. One should stop issuing them food. Mr. Schiegries receives all powers to take appropriate countermeasures. *Moreover, the special camp will be ready shortly, where such men will have to stay for 3 weeks. But Mr. Pleiger also agrees to the deprivation of food.*"

The evidence discloses that Pleiger was not averse to employing ruthless measures to keep foreign workers in involuntary servitude. A letter which appears to have been written by Pleiger to Speer, dated 30 August 1943, is revealing. Pleiger does not deny authorship of such letter. When such letter was shown him during his cross-examination he stated (*Tr. p. 15363*):

"* * * I think that this letter was sent out. I cannot say however with certainty."

The contents of such letter are in part as follows (*NG–5703, Pros. Ex. 3791*):

"Dear Party Member Speer,

"Enclosed I am sending you a study regarding the development of the personnel in the coal mining industry during the month of July and for the period 1–20 August of this year. In conclusion it shows that from 1 July to 20 August, 54,375 workers had been allocated to coal mining. 14,942 thereof were eastern workers and 20,630 PW's. Extraordinarily high is the number of those who during the same period had left their job, namely 42,477 which is 78.1 percent of all workers put to work, thereof 21,311 eastern workers and PW's. Due to this high figure of men who had left, the net addition from 1 July to 20 August is only 11,898. The total personnel in German coal mining at the end of June was 926,738, and on the 20 August it was 938,636.

"Already on 5 August when I received the first evidence as to the quickly increasing figure of the men who had left, I contacted by the same letters Gauleiter Sauckel and the Chief of the Security Police, asking for a more stringent control of foreigners. I am enclosing a copy of this letter. I am convinced that by far the greater part of the foreigners are finding other jobs somewhere else in Germany. However, means and methods must be found to bring these workers back to their job in the mining industry, or else the flight from mining will continue to increase if the men remaining on their job see that their compatriots are free to leave their working place. The labor employment offices which today possibly even welcome any additional labor in their district coming from any other district must be given the strictest order to put these men back on a job in the mining industry.

"This frequent leading of a vagrant life of these foreigners brings about in all cases losses in production to a considerable degree. The great lack of discipline of the foreigners becomes noticeable in first line in mining industry as two Sunday shifts are involved, and work in the mines for people not used to it is particularly difficult and dangerous.

"Means and methods must be found to make these escapees return to the mining industry as fast as possible. In this connection camps should be set up in the mining areas or departments in camps already existing for the educational discipline of those people when caught. Furthermore, it appears to me to be a necessity that a strongly worded order should be given not only to the labor offices but also to all employers, stating that the persons employing men having left their mining job are subject to punishment."

Evidence in the record shows indisputably that not only was involuntary foreign civilian labor employed in the mines of the Reich and in the industries of the Hermann Goering Works, but that in the course of such employment there was extensive exploitation of such workers in that there were many instances of their working under unhealthful conditions while at the same time being subjected to harsh and inhumane treatment.

In April 1941 the Reich Coal Association, RVK, was created by Funk, the Reich Minister of Economics, for the purpose of governing and regulating the coal industry in Germany. Defendant Pleiger was chairman of the Praesidium of such association from its founding until the end of the war. In such position he exercised considerable power and was active in the procurement of labor for the coal industry. This is apparent from the minutes of the Central Planning Board which hereinbefore have been

recruitment of eastern workers until 1943, that the evidence referred to, and by reason of his recommendations, and evidence of other activities. It is indeed significant, in view of the testimony of Pleiger to the effect that he did not know of involuntary shows that he, as head of the RVK, was advocating forcible conscription of eastern workers as early as 19 September 1941. Files of the military economic staff of the Army High Command, dated 20 September 1941, state in part (*EC–75, Pros. Ex. 1944*):

"NOTICE

"*Subject: Recruiting Ukrainian workers from the district of Krivoi-Rog*

"In the course of a telephonic conversation on 19 September, 11:15 a.m., Mr. Pleiger thought it necessary to discuss the various questions already in the first letter to the RAM (Reich Ministry of Labor). Paying the German wage scale would adversely influence wage levels in the Donetz Basin and in Krivoi-Rog from the beginning, *Mr. Pleiger contended it would be better not to hire these workers but simply to assign them work and to give them, besides their food, pocket money and an allowance to their dependents.* Moreover, Mr. Pleiger referred to the necessity to avoid from the beginning a clashing with the interests of other consumers.

"In an oral discussion between Dr. von Carlowitz (referred to by Mr. Pleiger) and Dr. Menger the *impossibility had been discussed to continue hiring workers on the basis heretofore customary in the occupied territories.* The following proposal in regard to a method of procedure was being discussed: The workers are to *be recruited by military administration headquarters* (IV Wi) under *the supervision of rear area commander in cooperation with the economic inspector.* After the economic inspectors once had ascertained how many workers are available and how many would be needed locally to operate the mines which are still in good working condition, the result thus determined should, by taking into account the requirements calculated by the RAM in *connection with the Reich Association Coal, furnish the basis for recruiting figures.* Actual recruiting *should be carried out by the military administration headquarter,* transportation and feeding as far as the Reich border should be organized by the German Wi organization (economic organization) in cooperation with the transportation officer and the competent military rations supply offices." [Emphasis supplied.]

At a Praesidium meeting of the RVK held on 25 and 26 September 1941, under chairmanship of Pleiger, it was stated (*NI–1512, Pros. Ex. 1946*), "Recruitment abroad (Krivoi-Rog, Poland, etc.) is to be continued energetically."

That such forced recruitment program was in fact carried out is evidenced by the Social Political Bulletin of the RVK dated 1 December 1941 which stated in part (*NI–4102, Pros. Ex. 1948*):

"A commission consisting of representatives of the interested offices of the OKW, the Reich Leader SS, the authorities, the Party, and the Reich Coal Association stayed in Krivoi-Rog from 8 November to 10 November 1941 in order to pass the necessary measures for the transfer of miners to the Ruhr district, in accordance with the Reich Marshal's decree of 24 October 1941. At present about 6,000 of the 10,000 to 12,000 miners provided come under consideration of this.

"Representatives of the Reich Ministry of Labor and the Reich Coal Association together with the competent Wehrmacht offices, will jointly prepare the necessary measures concerning local affairs.

"The registration of workers is being done by the labor authorities of Krivoi-Rog. The first medical examination will be made by an army physician. Every worker who is to be transferred will be disinfected twice. The first disinfection will take place at Krivoi-Rog, further disinfections at Przemysl, Lemberg [Lwow], or Tschenstochau [Czestochowa] according to choice. The police examination of the workers is carried out by Kommandos of the Security Police. All workers will first be employed as haulers in the Ruhr mines. Wages will correspond to the conditions ordered by the Reich Marshal.

* * * * * * *

"The transport will be carried out in closed transport trains under guard. Supervisory personnel will presumably be provided by the Reich Leader SS. The food supply for the transport will be handled by the army victualing offices.

"The transfer can be expected to begin in the next few days. According to the plan provided, the first transport will start from Krivoi-Rog on 5 December 1941."

On 23 June 1942 Pleiger addressed a letter to all district groups of the coal industry, the members of the Praesidium of the RVK and the syndicates, calling attention to the fact that agreements had been reached with Sauckel and Speer for the allocation to Goering of 43,000 Russian civilians and for the allocation of Russian prisoners of war to such industry. These were to be used in German-operated mines. Because of so many unfit people

among the Russian civilians thus to be allocated Pleiger states in part as follows (*NI–4731, Pros. Ex. 1954*):

"In view of these facts the Plenipotentiary General for Labor Allocation has agreed with the Reich Minister of Armaments and Munition and the competent military authorities, that Russian prisoners of war immediately have to be allocated to the German coal mining industries. The Ruhr district has put at disposal 30 officials who will go immediately to the PW camps and according to directives of the Plenipotentiary General for Labor Allocation will take all measures necessary for the technical expediency of the transports to all mining districts.

"The program for transports of PW's provides, from 23–29 June, daily transports of 2,000 men; on 29 and 30 June, 4,000 men on each day; and beginning with 1 July, 5,000 men daily.

"The transports of PW's are directed to the Stalag camps of the individual military areas. The transport and skilled metal workers are selected from these arriving transports of PW's in the Stalag camps. The remainder will be put at the disposal of the mining industries. It is your duty to take care that the personnel appointed by you examine once more whether the Russian PW's are physically fit for allocation in your plants. The labor which is declared unfit by you will be put at the disposal of the regional labor offices to be allocated elsewhere. I request you to contact immediately your competent regional labor offices and the Stalag camps and insure that the selection takes place in perfect order.

"5. The transport of PW's are directed in such a way that at first the requirements (indicated in column 1) of the above-mentioned list of barracks will be filled. The following order will be applied:

"(1) Ruhr, Aachen, Ibbenbueren, Rheinische Braunkohle, (Rhineland Brown Coal).

"(2) Westmark.

"(3) Mitteldeutsche Braunkohle (Central German Brown Coal).

"(4) Upper and Lower Silesia.

"(5) Sudetenland."

This and other evidence shows the extensive employment of Russian prisoners of war in the coal mines in the Reich.

Employment of prisoners of war in coal mines may not be *per se* a violation of the Geneva Convention as constituting employment of prisoners of war in a dangerous occupation. Coal mining by a miner trained for that purpose and working under

conditions where proper regulations and other safeguards are insisted upon and applied, may not constitute such dangerous work as to make it wrongful to employ prisoners of war therein. This, however, is not the only test. The Geneva Convention prohibits the employment of prisoners of war in work for which they may be physically unfit. It makes wrongful the employment of prisoners of war in work which has a direct relation to war operations. It provides that work hours must not be excessive, and that a weekly rest period of 24 hours must be allowed the workers each week. It provides that working conditions shall not be unhealthful and shall not be aggravated by disciplinary measures.

The testimony in this case proves beyond reasonable doubt that in many instances prisoners of war from Russia, Poland, Belgium, and France were employed, some in the coal mining industry, and some in the plants of the Hermann Goering Works. It appears, however, that in many instances requirements of the Geneva Convention with respect to prisoners of war were not observed in that in some instances men were assigned to work for which they were not fit; that they were assigned to work under conditions that were unhealthful; that they were not humanely treated; and their work was sometimes aggravated by disciplinary measures. There is little question but that Pleiger was aware of the conditions under which such prisoners of war were employed. In this connection it is significant to note that Pleiger, at the 17th meeting of the Central Planning Board on 28 October 1942, made a report on prisoner-of-war employment which in part is as follows (*R–124, Pros. Ex. 2275*):

> "Let me point out once more: so far 123,172 men were newly assigned while 36,842 have left. Furthermore, we have to take into consideration that we lost approximately 1,000 men per month in the Ruhr by accidents, death, etc. A certain replacement should follow automatically. We should, by right, add a certain quality factor to the percentage which we request. We lost 9,051 PW's, 8,150 eastern workers, and 19,641 other foreigners. These shortages are the reason for the fact that practically no satisfaction of the Ruhr mining industry could be achieved so far."

When thereupon being asked by Milch, "How can it be explained that you lost so many PW's?" the defendant Pleiger stated: "Through sickness and disability, also partly through self-mutilation." It appears to be clear that the use of prisoners of war in coal mines and under the conditions disclosed by the record in this case is a violation of the regulations of the Geneva Convention.

The evidence also establishes beyond reasonable doubt that forcibly conscripted foreign workers, including many foreign inmates from concentration camps, were employed in the Hermann Goering Works, and many foreign civilian workers were also employed in the coal mines of such Hermann Goering Works. The coal mines of such concern constituted a substantial coal production source of the Reich. It further appears that such laborers in the plants and in the mines of the Hermann Goering Works were exploited.

It also appears that prisoners of war were employed in the Hermann Goering plants under conditions that were in violation of the Geneva Convention. A few of such prisoners of war were used for transporting shells. Some prisoners of war there employed, because of the harsh and coercive measures used, abandoned their prisoner of war status and agreed to take civilian employment, and were thereupon assigned to the manufacture of materials for warfare. The evidence clearly shows that the objectionable conditions under which prisoners of war and the civilian foreign workers were employed did not consist merely of isolated and unusual instances, but were prevalent to such an extent as might well cause them to be called general. As to the employment of slave laborers in the concerns coming within the sphere of the RVK and in the plants of the Hermann Goering Works, there can be no question but that such objectionable labor conditions and treatment were within the knowledge of the defendant Pleiger who, as is disclosed by the evidence, held dominant and active positions in the RVK and in the Hermann Goering Works, and who had been instrumental in the procurement and allocation of these foreign slave laborers and prisoners of war to the coal mines and the plants in question. He would have us believe that he was not aware of any of these conditions. He has stated that if they were general he would have known about them. This is not, under the circumstances and in view of the evidence, an acceptable explanation. Many reports were directed to the RVK, the Praesidium of which was headed by Pleiger. Such reports were of such a nature as to apprise the RVK officials of conditions that needed immediate remedying. It appears that Pleiger visited plants. He has testified that when he did so he visited with the workers and would speak to them. He has stated that he does not *remember* labor reports. In view of the evidence and in view of the positions held by Pleiger we cannot believe that he was not aware of the objectionable and inhumane conditions under which the laborers in some of the mines and some of the plants were forced to labor.

We have here reviewed and called attention to but a small part of the evidence adduced by the prosecution. There is much other

evidence in the record that is corroborative of the conclusions that we have here reached. We have considered the evidence and arguments of the defense. From our consideration of all the evidence, we must and do find defendant Pleiger guilty under count seven.

KEHRL

In addition to the general charges made against all defendants in count seven it is specifically alleged that defendant Kehrl, during the period from September 1943 to May 1945, was Chief of the Planning Office of the Central Planning Board, and Chief of the Planning Office of the Reich Ministry of Armaments and War Production, in which capacities, among others, it is alleged he participated actively in the formulation and execution of the slave-labor program of the Third Reich. It is alleged these activities included arrangements for, attendance at, and participation in meetings of the Central Planning Board, and the submittal of proposed assignments of manpower to industry, agriculture, and other sectors of the German economy for decision by the Central Planning Board. It is alleged that he participated in the preparation of the decisions of the board and acted in supervision over their execution. It is further alleged that with full knowledge of the nature of the slave-labor program, he advocated and took part in numerous measures involving the forced recruitment and exploitation of foreign workers and the use and exploitation of prisoners of war in work directly relating to war operations.

The defendant Kehrl's position and activities in the Reich during the war years were, as has heretofore been indicated, numerous and important. It is apparent that these positions did not come to him by chance; nor were they unearned rewards. Important tasks were doubtless assigned to him because he had demonstrated himself to be a man of great energy and large capacities, a man who got things done.

Heretofore in our treatment of count seven we have discussed the creation and functions of the Central Planning Board. Its large and decisive role in the formulation and execution of the slave-labor program has been set forth. On 4 September 1943 Goering, by a decree, provided for the establishment of an executive office for said Central Planning Board which was known as the Planning Office. It is important to note some of the provisions of the decree establishing such a Planning Office (*NOKW–260, Pros. Ex. 2260*).

"For the preparation of decisions of the Central Planning [Board] and in order to secure the coordination of war needs in all branches of economy, I am setting up a Planning Office under the General Plenipotentiary for Armaments. It will be at the disposal of the Central Planning for all its tasks. The tasks and powers of the Planning Office will be fixed by the General Plenipotentiary for Armaments, who, with my consent, will appoint the chief of the Planning Office."

The defendant Kehrl was appointed chief of such Planning Office. It is again important to note that Speer by decree of 16 September 1943 set forth the duties of such Planning Office. Pertinent sections of said decree are as follows (*NI–2031, Pros. Ex. 2016*):

"1. The Planning Office prepares the decisions of Central Planning and supervises their execution.

"2. In this connection it will especially prepare the distribution to consumers of basic materials (for instance, iron, metals, coal, mineral oil, nitrogen, and other important raw materials).

"3. As a working basis for Central Planning, the Planning Office has to draw up plans for production and distribution for the entire war economy, the demand scheduled being based on the demands of the entire German sphere of power. In this connection imports and exports are to be considered. The entire planning is to be synchronized in advance with the participating departments and specialist offices, taking into account production requisites. The Planning Office will constantly have to summarize and to evaluate the necessary statistical material.

"4. *The Planning Office will have to submit to Central Planning for decision the proposed assignment of manpower to the individual big sectors of employment* (trade economy on war work, traffic, foodstuffs, etc.) *It also has to evaluate statistically the carrying through of the assignments.* [Emphasis supplied.]

"5. The Planning Office will have to advocate toward the Reich Ministry of Economics the requirements of war industry in connection with the establishment of import and export quotas. It has to report constantly to Central Planning about the state of imports essential for war economy.

"II

* * * * * * *

"4. The Planning Office has to evaluate statistically the industrial and war production existing within the power sphere of Greater Germany or of the states allied with the Reich; it has

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to develop out of that evaluation proposals for a common exchange of production in order to increase the initial war production."

In this connection it is important to remember that during the period from 1943 to 1945 defendant Kehrl, among other important positions, also held the office of Chief in the Raw Material Office of the Ministry of Armaments and War Production.

While the defendant was not a member of the Central Planning Board itself, his activities and influence on such board was very considerable. This is convincingly proved by the minutes of many meetings of the Central Planning Board which are in evidence in this case. The repeated efforts of the defendant himself in the course of the case, as well as by witnesses testifying in his behalf, to minimize the importance and extent of Kehrl's influence and activities in the Central Planning Board are not at all convincing in view of the unalterable record presented by the minutes of the various meetings of the Central Planning Board. In this connection we may well refer to the meeting of such board held on 26 January 1943 which was, in fact, before the creation of the Planning Office of which he subsequently became chairman. Here the proceedings indicate clearly that defendant Kehrl was one who helped shape policy before such Board. In such meeting, for instance, the defendant Kehrl stated (*R–124, Pros. Ex. 2279*):

> "I have so far repeatedly left the impression of extreme stubbornness in the Central Planning Board. I believe, however, that such stubbornness is necessary from at least one side."

The minutes further reveal that Speer stated:

> "As Kehrl is working in a high position with the Ministry of Economics, I want to ask him to make his requests as urgent as possible * * *."

The defendant Kehrl responded:

> "I had just intended today to ask you for support in this direction. I also am of the opinion that the war situation would look entirely different if we had used radical measures in the past."

At the same meeting the defendant said:

> "The occupied territories ought to be placed under strict economic control. Holland is now under our Reich office. In the beginning of February I want to go to Brussels. The occupied territories should be utilized much more."

The Planning Office of the Central Planning Board played an extremely vital role in the functioning of the Central Planning Board, including important plans and decisions with respect to questions relating to the procurement and allocation of labor. Efforts of the defendant and other witnesses to minimize the extent of the defendant's activities as the head of said planning board, as hereinbefore indicated, are unconvincing. Various so-called weekly reports of the Planning Office which, in fact, were introduced by the defense in this case indicate strongly the nature and extent of such activities. Evidence introduced in this case indicates that Kehrl, as Chief of the Planning Office and Chief of the Raw Material Office of the Armaments Ministry and War Production, attended practically all the meetings of the Central Planning Board. The Central Planning Board, it appears, assigned to and relied upon the Planning Office headed by Kehrl to make important estimates as to the best possible industrial use of new labor supply. It appears that Kehrl was present in the Central Planning Board on 1 March 1944 when questions pertaining to labor supply and the allocation of labor were discussed. Here it is graphically illustrated that as Chief of the Planning Office of the Central Planning Board, Kehrl was not a mere innocuous administrative clerk, but one who took an active part in the discussions of such Central Planning Board and helped direct and shape its policies and decisions. In such meeting of 1 March 1944 the questions pertaining to the procurement of additional foreign labor were exhaustively discussed. Kehrl contributed considerably to such discussion. Kehrl, with others, indicated more labor was needed.

Another meeting of the Central Planning Board must also be referred to in this connection, also held on 1 March 1944. At such meeting questions pertaining to labor were exhaustively gone into. Again Kehrl took an active part in the discussion and deliberations of such board. At such meeting it appears that Kehrl, speaking in behalf of Speer, said (*R–124, Pros. Ex. 2288*):

> "May I briefly explain the point of view of the Minister. Otherwise the impression might be given that the measures applied by Minister Speer are incomprehensible or senseless, and I would not like such an impression to be created. To us, the affair looks as follows: The assignment of labor for German purposes in France was of comparatively modest proportions up to the beginning of 1943, because the extent of the shifting over of production was limited to a few things with which the German capacity could not cope and beyond that to a few main industries. During all this time a great number of Frenchmen were recruited and voluntarily went to Germany."

It appears that Sauckel interrupted by saying, "Not only voluntarily; some were recruited forcibly." To which it appears Kehrl rejoined:

"The calling-up started after the recruitment did no longer yield enough results."

Sauckel then said:

"Out of the 5 million foreign workers who arrived in Germany, not even 200,000 came voluntarily."

The defendant Kehrl then rejoined:

"Let us leave open for the moment the question to what extent slight pressure was used. Formally, at least, they were volunteers. Since this voluntary recruitment no longer had satisfactory results, we started a call-up according to age groups, and in this we were very successful with the first age group. At least 80 percent of the age group was conscripted and sent to Germany. This started about June of last year. Proportionately to the military developments in Russia and their repercussions on the attitude of the western nations to the war, the conscription by age group decreased substantially, as can be seen from statistical data available; people tried to dodge this conscription to Germany by age groups partly by failing to register at all, partly by not showing up for shipment or leaving the transports en route. On the first attempts of this sort in July and August, they noticed that the German authorities were either not able or not willing to seize these dodgers and take them into custody, or transfer them to Germany by force; as a result, the willingness to comply with conscription orders was reduced to a minimum, and thereafter it was only possible to conscript relatively low percentages in the individual countries. On the other hand, fearing that the German authorities might after all prove capable of tracing them, these people did not go into French, Belgian, or Dutch plants, but dispersed into the mountains and found help and assistance among the small partisan groups there."

It thus appears that Kehrl had detailed knowledge of the slave-labor program and its indefensible methods.

The evidence also reveals that in the Central Planning Board meeting of 25 May 1944 Kehrl suggested the use of 35,000 prisoners of war for use in the Ruhr mines. He even suggested that he might discuss the question with Himmler who had some Russian prisoners. The recorded proceedings of this meeting indicate that defendant Kehrl was inclined to exercise a positive and

aggressive attitude with respect to the deliberations and decisions of the Central Planning Board. As indicative thereof, reference is made to a discussion between Kehrl and Speer over coal allocation. In such dialogue Speer stated:

> "I would be ready to decide from the Central Planning Board to proceed according to this plan and would draw the corresponding deductions from it. But somehow we must also sign what we have suggested. I'm ready to sign the proposition."

Kehrl then stated, "I am not ready to sign it." To which Speer rejoined, "You are subordinate to me." To this Kehrl replied:

> "But I have the opportunity to say something before the final word. I don't think that the suggestion as it is here is possible to that extent with the full burdening of the iron."

Kehrl then proceeded to make a lengthy argument in support of his position. The deliberations of this meeting as a whole indicate indisputably the aggressiveness and the influence of Kehrl with respect to the decisions of the Central Planning Board.

It appears from the evidence in the record Kehrl had knowledge that prisoners of war were being employed in the production of armaments.

There is evidence proving Speer designated Kehrl to represent him in a meeting to be held on 3 January 1944 with Himmler, Keitel, and Sauckel to discuss the "transfer" of French labor. It appears from the evidence that the defendant Kehrl also was active in the Central Planning Board with the allocation of concentration camp inmates to industry. A great deal of evidence, corroborative of the matters hereinbefore referred to, establish beyond reasonable doubt the activity and the influence of defendant Kehrl in the shaping and carrying out of the slave-labor program. As heretofore stated, efforts made by the defendant and his witnesses to minimize the importance and influence of Kehrl's position and activities, with respect to the slave-labor program, were not convincing. In fact evidence introduced in the defendant's behalf indicates indisputably that the functions and activities of the defendant as head of the Planning Office of the Central Planning Board and in other capacities were considerable with respect to the policies and execution of the slave-labor program.

The defendant also, by the way of defense, has alluded to the fact that he differed with Sauckel with respect to the so-called protected-plant scheme, whereby certain industries in occupied countries were given war work, and the workers therein were not subject to deportation to Germany. It appears that Sauckel

disliked such scheme as it interfered with his seizure of foreign workers thus employed. While an extensive operation of such protected plants may have served to decrease the number of foreign laborers deported to Germany, this cannot serve to absolve him from the guilt that attaches to him for his otherwise energetic furtherance of said program. The Tribunal will not ignore efforts thus made by Kehrl to alleviate the harshness of the slave-labor program by a policy which would thus restrict deportations from the occupied territories into Germany. We cannot, of course, overlook the fact that the carrying out of a slave-labor program by the German Reich in plants operated by it in a foreign territory would still be slave labor. In this connection the International Military Tribunal stated as follows*:

> "Speer has argued that he advocated the reorganization of the labor program to place a greater emphasis on utilization of German labor in war production in Germany and on the use of labor in occupied countries in local production of consumer goods formerly produced in Germany. Speer took steps in this direction by establishing the so-called 'blocked industries' in the occupied territories which were used to produce goods to be shipped to Germany. Employees of these industries were immune from deportation to Germany as slave laborers, and any worker who had been ordered to go to Germany could avoid deportation if he went to work for a blocked industry. This system, although somewhat less inhumane than deportation to Germany, was still illegal. The system of blocked industries played only a small part in the over-all slave-labor program, although Speer urged its cooperation with the slave-labor program, knowing the way in which it was actually being administered."

From a full consideration of all the evidence adduced by the prosecution and the evidence offered in opposition thereto by the defendant, the Tribunal finds the defendant Kehrl guilty under count seven.

PUHL

The defendant Emil Puhl, under count seven, is specifically charged with having been active in financing enterprises which, to his knowledge, were primarily created to exploit slave labor. It is asserted that in 1939 defendant Puhl, acting directly through the instrumentality of the Reich Bank and otherwise, conducted negotiations with the SS concerning a loan of 8 million reichsmarks to the Deutsche Erd- und Steinwerke, commonly known as the DEST, an SS economic subsidiary which was especially de-

* Trial of the Major War Criminals, op. cit., volume I, page 332.

signed to utilize concentration camp labor for the purposes of the Four Year Plan. It is further alleged that upon the recommendation of Puhl such loan was granted by the Golddiskontbank, and that thereafter the defendant assisted the DEST in securing additional large loans, obtaining reductions on interest rates on such loans, and receiving extensions of time for repayment.

The evidence adduced by the prosecution indicates that the defendant Puhl was a member of the Aufsichtsrat of the Deutsche Golddiskontbank, which was a subsidiary of the Reich Bank from 1935 to 1945, and that he was a member of the board of directors of the Reich Bank from 1935 to 1945, and vice president of the Reich Bank from 1939 to 1945. It appears from the evidence that an application for a loan from the Golddiskontbank was made in behalf of the DEST for the purpose of expanding the activities of such organization to make use of the labor of inmates of concentration camps in accordance with the purposes of the Four Year Plan. From the evidence it appears that it was recognized that neither the Reich Bank nor the Golddiskontbank could with propriety issue such credit, but a substantial loan, to wit, in the sum of 8 million reichsmarks, was made pursuant to such request in October 1939 from funds on deposit there by the Reich Ministry of Economics, such loan being made after payment had been acquiesced in by the Minister of Economics and the president of the Deutsche Reich Bank, Walther Funk. In the connection it is well to note that findings in the IMT judgment with respect to the said Funk who was there a defendant contain the following*:

> "As president of the Reich Bank, Funk was also indirectly involved in the utilization of concentration camp labor. Under his direction the Reich Bank set up a revolving fund of 12 million reichsmarks to the credit of the SS for the construction of factories to use concentration camp laborers."

The prosecution introduced evidence to show that the defendant made a visit to certain concentration camps of the DEST in connection with the loan of the DEST, with a view to determining the meritoriousness of the application for said loan. Such visit it appears was made in 1939. There is nothing in the evidence, however, to indicate that the defendant at that time was aware that nationals of countries other than Germany were imprisoned in such camps, although such seems to be the contention of the prosecution. At this early date probably, if there were other nationals in such camps they were so extremely few in number as not to be noticeable.

* Ibid., p. 306.

A further request for a loan appears to have been made and acted upon favorably in May of 1941. Here again, however, it appears that such loan was granted only "after a thorough discussion with the Reich Minister of Economy and president of the German Reich Bank, Walther Funk." Taking the documentary evidence submitted by the prosecution to show the granting of loans to the SS for the purpose of utilization of concentration camps, we are inclined to the view that Funk was the deciding individual in such transactions. The contention of the prosecution, to the effect that Puhl had authority to make such loans and did in fact make them on his own discretion, does not appear to be justified by the evidence. The evidence adduced to show that the defendant Puhl held positions of considerable responsibility and authority are not in themselves controlling on this question. There is nothing to indicate that Funk in these particular transactions was not the deciding factor. Evidence offered in behalf of the defendant also tends to throw serious doubt upon the contention that Puhl played a decisive role in the granting of such loans. From the evidence it is doubtful whether defendant Puhl did more than act as a conduit in these particular transactions.

The Tribunal is of the opinion that the charges against defendant Puhl under count seven have not been proved beyond a reasonable doubt and he is, accordingly, found not guilty under such count.

RASCHE

The defendant Rasche is specifically accused under count seven with having been active in financing enterprises which, to his knowledge, were primarily created to exploit slave labor. It is specifically asserted that Rasche took a leading role, in conjunction with one Emil Meyer, who is alleged to have been his colleague in the SS, the Circle of Friends, and the Vorstand of the Dresdner Bank, in sponsoring, supporting, approving, and obtaining approval for loans totaling millions of reichsmarks to enterprises which used concentration camp labor on a wide scale and under inhumane conditions. It is asserted that the enterprises to which such loans were made included numerous industries and services maintained and operated throughout Germany and the occupied countries by the Economic and Administrative Main Department (Wirtschafts- und Verwaltungshauptamt, commonly known as the WVHA), which was the main department of the SS charged with the operation, maintenance, administration, and establishment of concentration camps. It is alleged that in many instances the loans were unsecured and in other instances they were secured only by a so-called "declaration of the Reich Leader SS."

Considerable evidence was introduced by the prosecution with respect to this count. The defendant also introduced considerable evidence in refutation of the charges made hereunder.

The Tribunal is not impressed with the proof adduced by the prosecution to sustain the charges here made against defendant Rasche.

It appears that defendant Rasche was a member and later "speaker" of the Vorstand of the Dresdner Bank from 1935 to 1945. While in such position it is claimed by the prosecution he participated in the financing of SS enterprises which used concentration camp labor on a wide scale and under inhumane conditions. Careful consideration of the evidence as adduced by the prosecution and by the defense fails to reveal that the defendant Rasche did in fact wrongfully participate "in sponsoring, supporting, approving, and obtaining approval for loans totaling millions of reichsmarks to SS enterprises which used concentration camp labor." The testimony reveals that the Dresdner Bank did, over a period of time, make loans of various amounts to SS enterprises which were being operated with concentration camp labor. There is little doubt but that the Emil Meyer, referred to in the charges as having acted in conjunction with defendant Rasche, took an active part in handling the applications for such loans when they were submitted to the Dresdner Bank. In this connection it is well to note that the Dresdner Bank was a private banking institution conducting a great volume of business. It appears that the loans, despite the claims of the prosecution to the contrary, were for the most part short-term loans and bear all the indications of having been conducted with the same objectives in mind as usually prompt the making of loans by any banking institution. The prosecution failed to establish their contention that the defendant Rasche in fact was one of the really deciding individuals within the bank in the making of such loans. It appears that such loans were usually secured. It is charged that some of such loans were not backed by any other guarantee than that of the Reich Leader SS. This is not serious in view of the fact that under the conditions that prevailed in Germany at said times a guarantee by the Reich Leader SS of such loans could reasonably be considered as tantamount to a guarantee of such loan by the Reich itself. This appears to have been the view of the loaning bank officials.

In view of the foregoing, further discussion with respect to the charges against Rasche in this count may not be necessary. The Tribunal, however, wishes to note that even if it were assumed that the defendant Rasche took or played a decisive role in the granting of said applications for loans to the SS it would

be difficult to find him guilty of participation in the slave-labor program on that account. The evidence adduced by the prosecution to show knowledge on the part of Rasche as to what was taking place in the SS enterprises with respect to labor is very unconvincing. The prosecution frequently referred to in their brief and relied upon the fact that Oswald Pohl, the head of the WVHA, in an affidavit introduced in evidence, indicated that Rasche had visited with others in concentration camps at a date antedating the war, and in which affidavit the affiant Pohl concluded that Rasche and the said Emil Meyer knew "that concentration camp prisoners were employed in those enterprises." The testimony of Oswald Pohl, as given in this case on 16 June 1948, deprives the statements of his affidavit of well nigh all of its claimed value in that he then stated that his affidavit, as made in 1946, was largely made from memory, and that with respect to the references therein made to defendant Rasche, "whom he admits that he did not know at the time of the alleged visits to the concentration camps," he stated (*Tr. p. 8921*):

> "* * * and I do not know myself how I came to make that statement; I was completely hazy."

The defendant Rasche himself unequivocally denied ever having visited concentration camps. Other testimony offered to prove knowledge by Rasche of concentration camp employment in the enterprises in question and of the alleged inhumane exploitation of labor therein for the most part consisted of poorly supported conclusions. In this connection it may be well to remember that the employment of prisoners is not, *per se,* a violation of international law. At the date when defendant Rasche is alleged to have made visits to the concentration camps, Germany apparently was not yet engaged in seizing of nationals from other countries and placing them in concentration camps for labor in SS industries. Knowledge, therefore, with respect to the illegal use of labor in the SS enterprises cannot be predicated upon such alleged visit or visits. That knowledge subsequently came to the defendant Rasche with respect to such alleged illegal use of labor in the SS enterprises to which the Dresdner Bank had made loans is certainly not proved beyond reasonable doubt. The defense testimony was to the effect that the defendant had no such knowledge. We cannot go so far as to enunciate the proposition that the official of a loaning bank is chargeable with the illegal operations alleged to have resulted from loans or which may have been contemplated by the borrower. Rasche as an official of the loaning bank under the circumstances surrounding the loans here under consideration, as revealed by the evidence, did not thereby become

a criminal partner of the SS in the slave-labor program.

The Tribunal finds the defendant Rasche not guilty under count seven.

COUNT EIGHT—MEMBERSHIP IN CRIMINAL ORGANIZATIONS

The defendant von Weizsaecker, Keppler, Bohle, Woermann, Veesenmayer, Lammers, Stuckart, Darré, Dietrich, Berger, Schellenberg, Rasche, Kehrl, and Koerner are charged with membership, subsequent to 1 September 1930, in Die Schutzstaffel der National-Sozialistischen Deutschen Arbeiterpartei (commonly known as the SS) which was declared by the International Military Tribunal to be a criminal organization.

The defendant Schellenberg is charged with membership subsequent to 1 September 1939 in the Sicherheitsdienst des Reichsfuehrer SS (commonly known as the SD) likewise declared to be criminal by the International Military Tribunal.

The defendants Bohle, Darré, Dietrich, and Keppler are charged with membership subsequent to 1 September 1930 in categories of the Leadership Corps of the Nazi Party.

In determining the fact of innocence or guilt of these defendants we shall scrupulously bear in mind the words of caution found in the International Military Tribunal judgment: first, that guilt is personal and mass punishments should be avoided; that in determining criminality of members of the prescribed organizations those who, though their membership was voluntary had no knowledge of the criminal purposes or acts, as excluded, as well as those who were drafted by the State for membership, unless they are personally implicated in the commission of acts declared criminal by Article 6 of the Charter [Charter of the International Military Tribunal] as members of the organization. Therefore, membership alone does not constitute proof of guilt.

A number of the defendants involved in this count assert that they were only nominal members of the SS, known as Ehrenfuehrer; that they took no part in the activities of the SS, had no functions, and performed no duties, and that therefore they cannot be convicted under count eight.

Shortly after the seizure of power and increasingly thereafter, Himmler, as Reich Leader SS, instituted a program of conferring an honorary rank in the SS upon officials in other governmental departments, and upon many who were prominent in industry, commerce, banking, science, and other phases of civilian life.

On 23 January 1936 the title of Ehrenfuehrer was abolished and those who had held such a title became ordinary members of the SS and were assigned to various staffs of that organization.

In most instances those so appointed were given no official duties or responsibilities, and had no executive, administrative, or command functions in the organization. The motives which prompted Himmler are not wholly clear, but we think included at least the following:

1. A desire to bring into the SS organization the prominent and respectable in the Reich that he might be able to point with pride that it contained names which, if they did not glitter, at least were honored as respected and powerful.

2. That by conferring these titles he could thereby put the recipient under a certain measure of obligation to him and arouse at least in some instances a sense of loyalty to himself and his organization.

3. That he harbored definite plans to ultimately make the SS the real governing power of Germany.

Those who accepted his offers did so from a variety of reasons. Some were not interested in and were quite unsympathetic toward Himmler and his organization, but were urged or instructed to accept rank in the SS by superiors who felt either pride or political necessity in establishing that they and their officials were in close touch and harmony with the powerful Himmler. Others sought and accepted them as a sort of insurance against interference by the Gestapo or the SD, and some because they felt that the glamour of the uniform and a position of rank would better enable them to carry out programs of their own.

Finally, there were others who approved of Himmler's policy, and desired to be associated therewith, and to obtain credit and gain which they hoped such association would bring in its train.

BOHLE

The defendant Bohle entered a plea of guilty to count eight. He was appointed Brigadefuehrer in the SS in September 1936, and Gruppenfuehrer in April 1937, then Obergruppenfuehrer in June 1943, which ranks are comparable with those of brigadier general, major general, and lieutenant general in the Waffen SS.

He was a Gauleiter and a member of the Leadership Corps of the Party after 1 September 1939. He was aware of the criminal nature of the SS organization, and so knowing he remained a member after 1 September 1939.

His plea of guilty has been accepted, and we find him guilty as charged.

VON WEIZSAECKER

The defendant von Weizsaecker at the insistence, even the order of von Ribbentrop, in 1938 accepted the so-called honorary rank of Oberfuehrer, and finally by January 1942 he was promoted to that of Brigadefuehrer.

We find that he had and exercised no functions in the SS, that he was wholly unsympathetic with it, and that Himmler, on his part, had neither liking for and felt considerable distrust of von Weizsaecker. This is substantiated by the fact that the defendant did not receive an SS rank comparable to his position as State Secretary in the Foreign Office.

While it may be inaccurate to say that he was drafted by the State for membership, the circumstances of his appointment are such that we can see no substantial difference between him and those who were drafted by decree or order.

Von Weizsaecker was quite aware that the SS was a criminal organization, a fact which is apparent from his own testimony, but we do not find that he was personally implicated as a member of the organization in the commission of acts declared criminal by Article 6 of the Charter.

Von Weizsaecker should be and hereby is acquitted under count eight.

WOERMANN

As Under Secretary to the Foreign Office, the defendant Woermann was made an SS Standartenfuehrer in 1938 and promoted to Oberfuehrer in 1941. Like von Weizsaecker, he accepted membership in the SS at the insistence or even order of von Ribbentrop. He did not voluntarily become a member, and performed no functions, and exercised no command, and had no desire to do either.

That von Ribbentrop solicited and obtained honorary ranks in the SS for both von Weizsaecker and Woermann was due to the desire, born of his inordinate vanity, that members of the Foreign Office appear at public functions wearing some sort of uniform, and this desire persisted until a Foreign Office uniform was designed and approved.

We do not look upon Woermann as a voluntary member of the SS. We have no doubt that he was or soon became acutely aware of its criminal program. He was not *persona grata* with Himmler or the latter's coterie.

Our finding with respect to him is identical with that made regarding von Weizsaecker. He should be and is acquitted under count eight.

KEPPLER

The defendant Keppler became a member of the SS on 21 March 1933. For a considerable time prior, and for a number of years subsequently, he was one of Hitler's principal advisers. He was chosen to go to Vienna as Hitler's direct and personal representative during the crucial days immediately prior to the invasion and aggression against Austria. He advised Himmler to organize the DUT which, as we have heretofore held, was an essential component in the Germanization and resettlement program, created and carried out by the Reich Leader SS, and was one of the executive and administrative organizations of the DUT carrying out this program. He was familiar with the objects, purposes of, and the methods used by the Germanization and resettlement program.

We have found him guilty under count five by reason of the part which he played in the organization of the DUT and as chairman of the Aufsichtsrat. Keppler also organized the circle which became known as the Himmler Circle of Friends, the purpose of which was to bring personages prominent in the commercial, banking, and scientific world into close and sympathetic touch with Himmler and his organization.

Immediately upon entering the SS he received the so-called honorary rank of colonel [Standartenfuehrer]. On 23 August 1933 he was promoted to the rank of Oberfuehrer, or senior colonel, on 30 January 1935 to Brigadefuehrer, on 13 September 1936 to SS Gruppenfuehrer, and on 30 January 1942 to Obergruppenfuehrer. These ranks correspond to those of colonel, senior colonel, brigadier general, major general, and lieutenant general in the Waffen SS.

The defendant insists that all these ranks were honorary and that he did not participate in SS activities. We are unable to accept this defense. The evidence establishes beyond a doubt that he not only knew of the criminal acts and purposes of the SS, but that he actively participated in some of them, particularly in those of the DUT.

We find the defendant Keppler guilty under count eight.

VEESENMAYER

This defendant was a convinced National Socialist. He had an early Party number of 873,780, and an SS number of 202,122. On 13 September 1938 he received the rank of Untersturmfuehrer, on 9 November 1937 that of Hauptsturmfuehrer, on 12 March 1938 that of Standartenfuehrer, on 30 January 1942 that of Oberfuehrer, and on 15 March 1944 he became a Brigadefuehrer.

He collaborated with the SS in his operations in Serbia and Croatia, and with Benzler took an active part in the proposal for deportation of the Serbian Jews.

It was he who reported, investigated, and recommended to von Ribbentrop a program to compel the Hungarians to organize and become a puppet government and state under the complete domination of Germany, thus depriving her of her sovereign powers, and to compel her to enact anti-Jewish measures and join in the deportation of Hungarian Jews to the East. His recommendations were accepted and he was selected to act as German Minister and Plenipotentiary to Hungary and carry out those measures. He was intimately connected with the brutal deportation of Hungarian Jews to the East where they were committed to slave labor or exterminated.

He was fully aware of the criminal nature of the SS and the part it was to and did play in the deportation and extermination of Jews. The defendant insists that his actions in Hungary were not as a member of the SS and that he came into various conflicts with the SS leaders there, but those disputes arose over questions of timing and method rather than objectives. His acts in Hungary, however, were those of an official of the Foreign Office and not as a member of the SS.

We note that when he fell under the displeasure of Goering he applied to Heydrich and Himmler as an SS member to have his honor and position reestablished.

He is, and we find him guilty as charged in count eight.

LAMMERS

The defendant Lammers was appointed Oberfuehrer in the SS on 29 September 1933, Brigadefuehrer on 20 April 1935, Gruppenfuehrer on 30 January 1938, and Obergruppenfuehrer on 20 April 1940.

While, as we have stated, the title Ehrenfuehrer was abolished by Himmler in 1936, we are nevertheless of the opinion that Lammers' rank and position in the SS was in fact honorary. He had no function and exercised no command by reason of them. His relations with Himmler were on a friendly and intimate basis. He was fully aware of the criminal nature of the SS organization and of its programs, where and how they were executed.

As Reich Minister and Chief of the Reich Chancellery, he learned of the criminal conduct of the Einsatzkommandos, and of the Higher SS and Police Leaders in the East, of the complaints made by Rosenberg, Frank, and Kube of the outrages committed by Koch and the SS organizations. He had no illu-

sions that they were anything other than history has disclosed them to be. He knew of the mass murders in the East; he knew of the forced evacuations of the civilian populations; he knew of the deportation of Jews to the East and of the fate which awaited them there. His membership in the SS was voluntary, and with the knowledge of those criminal activities he remained a member.

We find the defendant Lammers guilty under count eight.

STUCKART

The defendant Stuckart became a member of the SD in September 1936 and a member of the SS in the same year. Apparently his first rank in the latter organization was Obersturmfuehrer.

On 30 January 1944 he was promoted to SS Obergruppenfuehrer, equivalent to that of lieutenant general, having in the meantime held intermediate ranks. He was well acquainted with Himmler. He advised with him with regard to many of the criminal activities and programs of the SS, and he continued to remain a member of the organization; he was advised by Loesner of the mass murder of Jews at Riga, was present at the Wannsee conference when the fatal "final solution" of Jews was announced, and he made the recommendation that the Mischling Jews be sterilized instead of deported to the East, a suggestion that no one would father unless he knew and appreciated that deportation would be a worse fate.

He played a part in drafting the laws, decrees, and regulations which helped the SS carry on many of its criminal activities. He was appointed Secretary of the Ministry of Interior when Himmler became its Minister, and remained there until its collapse.

We find him guilty as charged under count eight.

BERGER

The defendant Berger was a member of the SS. He was Chief of the SS Main Office. He attained the rank of SS Obergruppenfuehrer; he was one of the principal subordinates of Himmler in the SS. He was himself engaged in active participation in some of the crimes committed by that organization. He was intimately acquainted with its criminal activities.

We find him guilty under count eight.

SCHELLENBERG

The defendant Schellenberg was a member of the SS and SD. He was one of the officers in Amt IV and became Chief of Amt VI

of the RSHA. He was promoted from time to time and attained the rank of SS Brigadefuehrer.

It is established beyond doubt, and in fact the defendant's own testimony reveals, that he was familiar with many, if not all, of the criminal activities of the SS.

We find the defendant guilty as charged in count eight.

Matters of extenuation and mitigation.—We think it is clear that in the latter years of the war, and particularly when the defeat and collapse of Germany became apparent to all except the most blind, Schellenberg participated in the aiding of those who suffered from imprisonment, oppression, and persecution in the Third Reich, and that these activities were of actual and notable aid in immediate amelioration of their distress.

We deem it unnecessary to determine whether these actions arose from true benevolence or from a desire to curry favor with the then imminent victors. His motives made no difference to the beneficiaries of his acts, and we shall not deprive him of the credit arising therefrom.

DIETRICH

The defendant Dietrich was a Reichsleiter in the Leadership Corps of the Nazi Party in 1932. He maintained that position until the collapse. He was the Party Press Chief, Hitler's Press Chief, Reich Press Chief, and State Secretary in the Ministry of Propaganda.

He played an active part in the anti-Jewish persecutions by means of his control over the press. He was in constant attendance at the Fuehrer Headquarters. He voluntarily became a member of the SS on 24 December 1932 with the rank of Oberfuehrer; was promoted to Brigadefuehrer on 1 January 1934, Gruppenfuehrer on 27 January of that year, and Obergruppenfuehrer on 20 April 1941. He knew that the SS was a criminal organization and he knew of its criminal programs. He remained a member of the SS until the last.

It is clear, however, that he had no functions or exercised no command in the SS by reasons of the ranks conferred upon him, but knowing its program and knowing its activity, he remained a member.

We find him guilty as charged in count eight.

DARRÉ

Darré was a Reichsleiter of the Party Leadership Corps. He was Minister of Food and Agriculture, and exercised the duties of that office until 1942. He was a member of the SS, and from 1931 to 1938 served as Chief of the Race and Settlement Main

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Office of the SS. He attained the rank of Gruppenfuehrer [Obergruppenfuehrer]. As Minister of Food and Agriculture he took an important part in the Germanization and resettlement program, and, as he himself reported, made the plans prior to the outbreak of war for resettling Reich and ethnic Germans on farms confiscated from Polish nationals, and under his direction the ethnic and German farmers were selected and settled on those confiscated lands.

While the Fuehrer decree made Himmler Commissioner for the Strengthening of Germandom, nevertheless, after a considerable struggle, Darré succeeded in keeping a part of that program under his direction and control. He testifies that he quarreled with Himmler in 1938 and attempted to resign from the SS, and that Himmler referred the matter to Hitler who refused to permit him to resign, and that thereafter he took no part in SS activities and wore the uniform occasionally and then only at public functions, and finally, after 1939 he did not wear it at all.

While we have considerable doubt that the reasons which he gave for the quarrel, namely, that he disapproved of Himmler's policy, are entirely accurate or complete, we think the facts regarding his connection with the SS are substantially as he relates. There can be no question that as Himmler's powers increased and Backe's intrigues as State Secretary of the Department of Food and Agriculture came to successful fruition, Darré's power and influence considerably decreased.

We are not impressed with the prosecution's contention that a defendant, who in fact attempted to resign from a criminal organization, but who was kept on its rolls because Himmler or Hitler would not accept his resignation, can be convicted of membership in a proscribed organization. We are satisfied that Darré's activities in the Germanization program were those arising from his position as Minister of Food and Agriculture, and not from his membership in the SS, and that after 1 September 1939 he was a member of the organization in name only—that against his will.

We therefore acquit Darré of this charge.

He was, however, a Reichsleiter in the Leadership Corps of the Party and functioned in that position after 1 September 1939 and at least until he fell from power.

He was familiar with the Party program and the program of the Nazi government, and willingly participated in its criminal programs, particularly those relating to Germanization and resettlement.

We find him guilty under paragraph 75 of count eight, namely, of being a member of the Leadership Corps of the Nazi Party.

RASCHE

The defendant Rasche joined the SS on 9 November 1938, and was given the rank of Untersturmbannfuehrer [sic], and later was promoted, first, to Sturmbannfuehrer and in 1943 to Obersturmbannfuehrer. He exercised no executive or administrative command. He was a member of the Circle of Himmler's Friends, attended many of its meetings, and was a willing party to the annual contributions of 50,000 RM made to Himmler by the Dresdner Bank, of which he was a Vorstand member.

The evidence, however, does not establish that the Circle of Friends had any official connection with, or was a part of the SS, or that it played any part in the SS policy-making or participated in any of its criminal designs.

While Rasche's original entrance into the SS may have been due to his interest and position in the world of sports, we are convinced that his motives in retaining membership and in joining the Circle of Himmler's Friends was for the purpose of gaining prestige for himself, to improve the position of the Dresdner Bank, and to obtain connections which could be used as a lever to enable him and the bank to carry out his and its own designs in the commercial and banking field, and probably to enable him to assert pressure on those from whom the bank and its clients desired to purchase or otherwise acquire property.

His promotions in the SS were not due to the position which he held in the field of sports, but because of his connection with the bank and the business relations of the bank with the SS. He knew of the Germanization and resettlement program, knew that it was accomplished by forcible evacuation of the native populations and the settlement of ethnic Germans on the farms and homes confiscated from their former owners, and knew it was one of the SS programs and projects. This is disclosed by the record of the bank, to which we have heretofore adverted. With this knowledge he remained a member of the organization.

We do not find, however, that Rasche as a member of the organization participated in any crime committed by the SS.

We find the defendant Rasche guilty under count eight.

KEHRL

While the defendant Kehrl was working in Keppler's office, the latter told him that he had spoken to Himmler regarding his appointment to the SS and asked if this was agreeable. Kehrl answered in the affirmative. He states that he was appointed as an Ehrenfuehrer, but inasmuch as this office had been abolished prior to the time he joined the SS, this is evidently in error. He

first received a rank which corresponded to a second lieutenant, which evidently affronted him, and he left the SS, but reentered again in 1937 at the same rank, and was shortly therafter promoted to first lieutenant, and on 24 April 1938 to the rank of [senior] colonel (Oberfuehrer), and on 21 January 1941 to the grade of Brigadefuehrer.

However, he had exercised no functions as an SS member and had no right of command. He wrote Himmler on 30 September 1939 requesting an interview, stating that he desired to report about the political situation in the Protectorate which he was convinced would be of value to Himmler in his decisions regarding the handling of the police power there. He explains that he desired to complain to Hitler regarding hostages which were being taken by the Gestapo and other brutal steps for which the latter were responsible.

Kehrl was appointed to and acted as a member of the Aufsichtsrat of the DUT and was a member of its three-man working committee, along with Keppler and Greifelt. He was fully informed of its policies and functions, and became and remained a member of that board as representing the interest of the Ministry of Economy. He had knowledge of the objects and purposes of and the methods used in the Germanization and resettlement program.

We have heretofore discussed this program and held it to be criminal as a violation of international law and a crime against humanity within the meaning of Control Council Law No. 10.

The DUT was essentially an SS organization, and it is impossible to separate his activities in that organization as a member of the SS and as a representative of the Ministry of Economy. He was not selected by the Ministry but by Keppler and Himmler.

We find the defendant Kehrl guilty as charged under count eight.

KOERNER

The defendant Koerner voluntarily became a member of the SS in December 1931 because he thought, as Goering's adjutant and co-worker, it should be advantageous, and because as he says he felt that organization to be a select one and composed of persons of excellent character. He received a rank comparable to a major in February 1932 and shortly thereafter was promoted to the rank of colonel and in April 1933 to that of senior colonel.

In July of that year he was promoted to Gruppenfuehrer and on 30 January 1942 to the rank of Obergruppenfuehrer which compares to that of a lieutenant general.

It was Goering who on 31 July 1941 ordered Himmler, as Reich Leader SS, and Heydrich as Chief of the RSHA, to plan and execute the Final Solution of the Jewish Question within the spheres of German influence in Europe. Koerner was Goering's representative in the Four Year Plan, and when the latter's star waned and Speer's arose, he acted as a member of the Central Planning Board. He knew that the labor for many of the war industries was furnished by Himmler from the inmates of concentration camps, and that this was done at the insistence and request of the board of which he was a member.

He knew of the atrocities and crimes against humanity committed by the SS. He remained a member of the organization.

We find him guilty as charged in count eight.

To recapitulate its conclusions, the Tribunal finds the defendants, hereinafter named, guilty under the counts set opposite their respective names:

VON WEIZSAECKER	one, five.
STEENGRACHT VON MOYLAND	three, five.
KEPPLER	one, five, six, eight.
BOHLE	eight.
WOERMANN	one, five.
RITTER	three.
VEESENMAYER	five, seven, eight.
LAMMERS	one, three, five, seven, eight.
STUCKART	five, six, eight.
DARRE	five, six, eight.
DIETRICH	five, eight.
BERGER	three, five, seven, eight.
SCHELLENBERG	five, eight.
SCHWERIN VON KROSIGK	five, six.
PUHL	five.
KOERNER	one, six, seven, eight.
PLEIGER	six, seven.
KEHRL	five, six, seven, eight.
RASCHE	six, eight.

[Signed] WILLIAM C. CHRISTIANSON
Presiding Judge

I reserve the right to file later, separate dissenting views as to some convictions.
[Signed] LEON W. POWERS
Judge

[Signed] ROBERT F. MAGUIRE
Judge

C. SENTENCES*

THE MARSHAL: The honorable, the judges of Military Tribunal IV. American Military Tribunal IV is now in session. God save the United States of America and this honorable Tribunal.

There will be order in the Court.

PRESIDING JUDGE CHRISTIANSON: Tribunal IV convened this morning for the purpose of imposing sentences upon those defendants who have been found guilty in this case, Case 11. The Tribunal will now impose sentences upon those defendants who have been adjudged guilty in these proceedings. The Marshal will produce the defendant Ernst von Weizsaecker.

ERNST VON WEIZSAECKER, on the counts of the indictment on which you have been convicted the Tribunal sentences you to imprisonment for 7 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 25 July 1947. The Marshal will remove the defendant Weizsaecker.

The Marshal will produce before the Tribunal the defendant Ernst Bohle.

ERNST BOHLE, on the count of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for 5 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 23 May 1945.

The Marshal will remove the defendant Bohle, and the Marshal will produce before the Tribunal the defendant Ernst Woermann.

ERNST WOERMANN, on the counts of the indictment on which you have been convicted the Tribunal sentences you to imprisonment for a period of 7 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 15 October 1945.

The Marshal will remove the defendant Woermann and produce the defendant Karl Ritter.

KARL RITTER, on the count of the indictment on which you have been convicted the Tribunal sentences you to imprisonment for 4 years. The period spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 15 May 1945.

The Marshal will remove the defendant Karl Ritter and produce before the Tribunal the defendant Edmund Veesenmayer.

EDMUND VEESENMAYER, on the counts of the indictment on

* Sentences were imposed on 14 April 1949, transcript 28807–28813.

which you have been convicted the Tribunal sentences you to imprisonment for a period of 20 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged is deemed to begin on 14 May 1945.

The Marshal will remove the defendant Veesenmayer and produce before the Tribunal the defendant Hans Lammers.

HANS LAMMERS, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for 20 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 11 May 1945.

The Marshal will remove the defendant Lammers and produce before the Tribunal the defendant Richard Darré.

RICHARD DARRÉ, on the counts of the indictment on which you have been convicted the Tribunal sentences you to imprisonment for a period of 7 years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 14 April 1945.

The Marshal will remove the defendant Darré and produce before the Tribunal the defendant Otto Dietrich.

OTTO DIETRICH, on the counts of the indictment on which you have been convicted the Tribunal sentences you to 7 years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment as now adjudged is deemed to begin on 18 August 1945.

The Marshal will remove the defendant Dietrich and produce before the Tribunal the defendant Gottlob Berger.

We must have quiet in the courtroom.

GOTTLOB BERGER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for a period of 25 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 7 May 1945.

The Marshal will remove the defendant Berger and produce the defendant Schwerin von Krosigk.

SCHWERIN VON KROSIGK, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to a period of 10 years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 23 May 1945.

The Marshal will remove the defendant Schwerin von Krosigk and produce the defendant Emil Puhl.

EMIL PUHL, on the count of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for 5 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on 1 May 1945.

The Marshal will remove the defendant Emil Puhl and produce the defendant Karl Rasche.

KARL RASCHE, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for a period of 7 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 8 April 1945.

The Marshal will remove the defendant Rasche and produce the defendant Paul Koerner.

PAUL KOERNER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for a period of 15 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 6 May 1945.

The Marshal will remove the defendant Koerner and produce the defendant Paul Pleiger.

PAUL PLEIGER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for a term of 15 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 15 April 1945.

The Marshal will remove the defendant Pleiger and produce the defendant Hans Kehrl.

HANS KEHRL, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for the term of 15 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 8 June 1945.

The Marshal will remove the defendant Hans Kehrl.

Inasmuch as the defendants Gustav Adolf Steengracht von Moyland, Wilhelm Keppler, Wilhelm Stuckart, and Walter Schellenberg, who have all been convicted in these proceedings, are ill and hospitalized, it becomes necessary to impose sentences on them *in absentia*. Each of these defendants, through their counsel, has

requested permission to be absent during the imposition of sentence, which requests have been granted. All of these defendants are represented by counsel here today, I believe.

Is Steengracht von Moyland represented here? Yes, I see, by Dr. Haensel.

On the counts of the indictment upon which the defendant GUSTAV ADOLF STEENGRACHT VON MOYLAND has been convicted, we sentence him to imprisonment for a term of 7 years. The period already spent by him in confinement before and during the trial is to be credited on the term stated, and to this end the term of imprisonment as now adjudged shall be deemed to begin on 23 May 1945.

We will now impose sentence in the case of Wilhelm Keppler. Wilhelm Keppler's counsel is also present.

On the counts of the indictment upon which this defendant—that is, WILHELM KEPPLER—has been convicted, the Tribunal sentences him to imprisonment for a period of 10 years. The period already spent by him in confinement before and during the trial is to be credited on the term stated, and to this end the term of his imprisonment as now adjudged shall be deemed to begin on 10 May 1945.

We will now impose sentence in the case of WILHELM STUCKART, who is also represented by counsel here this morning.

In connection with this sentence, the Tribunal wishes to make this statement: Except for a short period of time when he was engaged in presenting his own defense, it has been necessary to excuse the defendant Stuckart from attendance in Court because of illness; he has been hospitalized most of the time, a situation which is expected to continue. His counsel have reported to the Tribunal concerning his physical condition, and they have submitted the report of German medical experts. The Tribunal requested that the United States Army appoint a board of competent Army officers to make a thorough physical examination of the defendant. This was done, and a written report has been submitted which has been filed with the records of this case. It appears that the defendant's physical condition is serious. He suffers from hypertensive cardio vascular disease or high blood pressure, anginal syndrome, and myocardial degeneration of the heart. Neither the American board of physicians nor the German doctors were able to give a favorable prognosis. The defendant is unable to undergo any physical exertion or strain, and must have complete rest and proper medication, and will require more or less constant hospitalization in the future. Under these circumstances, it is not at all unlikely that confinement would be equivalent to the death sentence. We have found the defendant guilty of serious charges, but his degree of guilt is not such as

to warrant a sentence of capital punishment, and we are not willing to impose a sentence which in practical effect might entail death. Under these circumstances, the Tribunal is of the opinion that the ends of justice will be met if the sentence which we impose practically coincides with the imprisonment that the defendant Stuckart has thus far undergone. He has been under arrest since 26 May 1945 and has been in continuous custody since that time. The Tribunal therefore sentences this defendant, Wilhelm Stuckart, to imprisonment for a period of 3 years, 10 months, and 20 days. The period already spent by him before and during the trial is to be credited to the term stated, and to this end the term of his imprisonment as now adjudged shall be deemed to begin on 26 May 1945.

We will now impose sentence in the case of WALTER SCHELLENBERG. Is Walter Schellenberg's counsel here? Yes, I see he is.

On the counts of the indictment on which the defendant Schellenberg is convicted, the Tribunal now sentences him to a term of imprisonment of 6 years. The period already spent by him in confinement before and during the trial is to be credited on the term stated, and to this end the term of his imprisonment as now adjudged shall be deemed to begin on 17 June 1945.

This completes the imposition of sentences.

Dr. Kubuschok?

DR. KUBUSCHOK: On behalf of all defense counsel I herewith submit to the Secretary General a motion which has been addressed to the Tribunal in which those defendants pronounced guilty ask that the judgment be set aside because of lack of jurisdiction of the Tribunal, and because of error in convictions and in facts.[1]

PRESIDING JUDGE CHRISTIANSON: Just a moment, Doctor. We have made formal provision for the filing of motions.[2] You may file your motion. File that with the Secretary General, and it will receive consideration.

DR. KUBUSCHOK: I shall now hand my motion to the Secretary General.

PRESIDING JUDGE CHRISTIANSON: Very well, it will be filed.

When the Tribunal presently adjourns it will convene again only if it deems it necessary to consider and dispose of motions which it has by order authorized may be made in connection with this case.* In such event, the Tribunal will convene at such time and place as may be designated by the Presiding Judge of the Tribunal.

Military Tribunal No. IV will and does now adjourn.

(At 1040 hours, 14 April 1949, the Tribunal adjourned.)

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[1] The Tribunal's order on this motion is reproduced in section XVIII B.

[2] Two orders of the Tribunal concerning the filing of motions alleging errors of facts and law in the judgment are reproduced in section XVII.

* The orders of the Tribunal after judgment are all reproduced in section XVIII.

XVI. DISSENTING OPINION OF JUDGE POWERS[1]

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B. Dissenting Opinion

It is a matter of deep regret to me that I am unable to agree with my associates in all that is determined in the opinion and judgment filed herein. That was indicated when I signed it with reservations. One who disassociates himself from a substantial part of an opinion and judgment is under some obligation, it seems to me, to state the reasons. That is my present purpose.

The limited time available does not permit me to indulge in elaboration, or to mention all the points of difference with the opinion. I must be content, therefore, in indicating in broad outline those differences of view which seem to me to be of

[1] The dissenting opinion was not read in open Court but filed with the Secretary General as a part of the record in the case at the time when the judgment of the Tribunal was being pronounced.

[2] This index was filed with the dissenting opinion.

major importance. Some preliminary observations by way of background for such discussion may be helpful.

The evidence in this case is not in substantial conflict, so far as it relates to the vital evidentiary facts. For the most part, in spite of some difference in coloration, the evidence for the defense rounds out and supplements the picture given by the prosecution. The divergence of opinion of the Tribunal arises chiefly from a difference of view as to the interpretation of the evidence, and particularly as to what inferences may properly be drawn therefrom and as to what facts must necessarily be shown to constitute guilt of a particular crime, and the degree of proof with which it must be established.

These matters will not be treated separately, or in order, but my position, with reference to all of them, will be expressed or illustrated in the course of this separate opinion.

It seems to me important also that we should refresh our recollection as to some of the rights of an accused and some dangers which must be guarded against to insure a just verdict, and that will be discussed also.

Beginning with the judgment of the International Military Tribunal decided under the London Charter, and running through all the decisions of subsequent tribunals at Nuernberg, which were decided under Control Law No. 10, of which the London Charter is made a part, the following propositions are clearly discernible:

1. That guilt is personal and individual and must be based on the personal acts of the individual charged and is not constructive or collective so that criminal acts of some may be charged to others who had no part in their commission and no control over those who did commit them.

2. That to establish personal guilt it must appear that the individual defendant must have performed some act which has a causal connection with the crime charged, and must have performed it with the intention of committing a crime. Such act may be an act of omission where there is a duty to act and power to prevent. Crimes, generally speaking, are intentional wrongs, the intentional results of action or non-action. They are committed willfully and knowingly as the indictment charges. They are not the result of accident or of circumstances over which the actor had no control and no reason to anticipate.

3. All the elements necessary to establish the personal guilt of the individual charged must be proven beyond a reasonable doubt.

This last proposition means that the burden is on the prosecution to establish the guilt of the defendant, in accordance with the preceding propositions, by proof beyond a reasonable doubt.

It means that in the meantime he is presumed to be innocent, and that such presumption stands as a witness for him throughout the trial. It means that all the material evidence must be considered and if from the credible evidence two inferences may be drawn, one of guilt and one of innocence, the latter must prevail. It means that where circumstances are relied upon to establish guilt, the circumstances must be so complete as to exclude any other reasonable hypothesis.

These propositions are not a mere collection of words to be repeated, given lip service, and then ignored. They are basic. The ideas they represent must be constantly kept in mind if the rights of the accused are to be properly safeguarded and the conviction of those who may not have actually committed the crime charged avoided. To ignore them and what they require of the Tribunal in the way of mental attitude at any stage of the proceedings is to open the door to error and injustice. There is a vast difference between evidence which proves a crime and that which confirms a suspicion.

Unfortunately the prosecution's case was, for the most part, not presented either in the evidence or in argument in harmony with these propositions and the concept which they represent. For example, evidence as to all the crimes committed by the Third Reich, and they were many and horrible, has been introduced before us in all their gory details, including movies of conditions in some concentration camps taken after Allied troops occupied the territory, although it is not charged that any defendant in this dock had any direct connection with or responsibility for such conditions. It is argued that the defendants are guilty of all these crimes of which they received knowledge, actual or constructive. Much of the time of the trial was taken up with an effort to prove such knowledge, frequently by means of documents which are shown to have reached their office. The theory is that if a defendant knew of a crime anywhere in the government and remained at his post of duty, he thereby approved the crime and became guilty of it. Of course, the same result would follow if a defendant by some document or otherwise took cognizance of the fact that a crime had been committed unless he openly and vigorously protested against it.

Other statements of the prosecution are more frank and realistic. Witness the following from a prosecution brief:

> "Unless we subscribe to the preposterous proposition that a crime should not be atoned for if it was committed by a state, those must atone for a nation's crimes who held prominent positions in agencies involved in their planning or execution."

This may explain many things in this case, including the fact that the men who seem to have actually committed war crimes by their own testimony appear in this case, not in the dock, but as witnesses for the prosecution.

These attitudes reflect impatience with the idea that these defendants, as individuals, must be shown to have personally committed crimes according to the usual and customary standards or tests. They may also indicate a realization that the evidence in many instances is insufficient to establish guilt by such standards. They represent a concept of mass or collective guilt, under which men should be found guilty of a crime even though they knew nothing about it when it occurred, and it was committed by people over whom they had no responsibility or control. The theory seems to be that this concept applies with special emphasis when the defendants held prominent positions in the government of Germany when the crimes were committed.

There are other arguments advanced to sustain convictions on a mass scale, which, in my judgment, are even more unsound on legal grounds and more vicious in their consequences. But since the opinion does not mention them, or reveal the part they played in the decision, I shall not attempt to discuss them. It is sufficient to say that I reject them all. Since conspiracy is out of this case, no sort of legal legerdemain can substitute for proof that the defendant as an individual committed some act either of omission or commission with the intent thereby to bring about a result which is a crime charged in the indictment, and which accomplished its purpose. If the evidence is insufficient to establish guilt beyond a reasonable doubt on the basis of such individual responsibility, as distinguished from group responsibility, this Tribunal has no other alternative than to acquit.

All of these arguments and contentions in behalf of the prosecution lead by somewhat different routes to a very simple formula for determining guilt as follows: The government of the Third Reich committed many crimes; the defendants held prominent positions in that government, and knew of some of these crimes; therefore, they are guilty. It smacks more of something else than a proceeding to fix the legal responsibility for crime.

It is strange doctrine and reasoning to be advanced by lawyers representing American justice, and the American concept of crime. One excuse for it is that Control Law No. 10 contains a provision that those are guilty of a crime "who took a consenting part therein."

The phrase is interpreted to mean that by giving consent to the crime after it was committed was to take a consenting part, and that failure to either openly protest or go on a sit-down strike in

time of war, after receiving knowledge that somebody somewhere in the government committed a crime, was to consent to the crime and thereby become guilty of it. It makes proof easy and guilt almost universal.

Frankly, it is incredible to me that such a contention should be advanced, and more incredible that it should receive serious consideration. It is wholly unrealistic. It has neither reason nor a rudimentary conception of justice to support it. It does not even give proper effect to the language used in Control Law No. 10, and has no support so far as I have been able to ascertain in any of the decisions here at Nuernberg. Properly construed, this phrase simply means that one who "took a consenting part" must be one who *took* a *part* in the *crime* and the consent must play a *part* in the crime. This is the language of the statute. Consent after the crime, if such a thing is possible, could not play a *part* in the crime. A failure to openly object to a crime after it has been committed, where there is no right of objection, because of absence of jurisdiction in the matter, and where such objection would, therefore, accomplish nothing, cannot properly be called "consent" at all, and even if failure to resign under such circumstances after hearing about a crime can properly be called "consent" it could not play a *part* in the crime. The phrase "take a consenting part" properly construed is not inconsistent with the idea of individual responsibility for crimes. It is not inconsistent with the idea that to constitute a crime there must be on the part of the person charged some action or omission of duty having a causal connection with the crime charged and undertaken with the intention of committing a crime. Any person who can order a crime committed can consent to its commission with equal effect and with equal responsibility. To take a consenting part means no more than that.

This is the only interpretation which makes sense. It is the only interpretation which is consistent with the allegations of the indictment that defendants committed crimes "knowingly and willfully." It is the only interpretation which is consistent with a presumption of innocence, and that personal and individual guilt must be established beyond a reasonable doubt.

Moreover, Control Council Law No. 10 does not provide that remaining in office after receiving knowledge that someone in the government has committed a crime, is in itself a crime, and the indictment makes no such charge. It is not a crime and it does not in itself prove any other crime. Nor can it properly be allowed to sustain a conviction, or motivate a conviction on some other ground.

In order to comply with the letter and spirit of what has been heretofore stated, we must put out of mind entirely the fact that these defendants were recently members of a regime which we thoroughly disliked and with which we were recently at war, and that some of them have uttered offensive sentiments against our country, its leaders, and its troops. We must put out of mind entirely all the crimes of their compatriots in which they took no part. We must disregard all the evidence of such crimes and the horrible details and pictures presented here in connection therewith, all of which are inflammatory in character and likely to arouse passion and prejudice. The men in this dock must be tried and judged on what they did, and not on what somebody else did. They must be tried solely on the evidence relating to the particular crimes charged against them. They must be judged on fair and impartial consideration of all the evidence relating to their guilt, and not on the personal beliefs of members of the Tribunal, which are not established by the evidence beyond a reasonable doubt. There must be no assumption on the part of the Tribunal that it knows more about the facts than is thus established by the evidence. Such detachment from all of these irrelevant and inflammatory matters, and such devotion to the essentials of a fair and proper trial must be achieved, if justice is to be done.

If there be those who regard such an approach with disfavor, let them take comfort in the fact that it represents not only the law applicable to the Tribunals, but the ideals of justice of the people of the nation which sponsors these trials, and that a vast majority of those people would feel betrayed if convictions were based on any lesser standard.

Moreover, they should reflect on the fact that if these trials have a reason for existence, it is to encourage respect for the rules applicable to warfare. Such encouragement comes quite as much in freeing from punishment those who are not shown to have willfully, knowingly, and with criminal intent violated these rules as it does in punishing those who have so violated them. Any suggestion of constructive or collective guilt, no matter how disguised, would, of course, punish those who did not individually and personally violate the rules equally with those who did, and thus destroy not only respect for the rules but also the whole legitimate purpose of the trials.

Any other approach to these trials or purpose in pursuing them could not have respect for law and justice as its object.

It has seemed to me not only proper but necessary to refer in this separate opinion to the arguments and contentions in behalf of conviction hereinabove discussed because of the light they may

cast on many of the convictions contained in the Tribunal's judgment. Many of these convictions are incomprehensible to me except as viewed in the light of such arguments and similar lines of reasoning. Unfortunately the opinion, long as it is, reveals little of the process of legal reasoning which sustains the conclusion.

There are other preliminary matters which should be briefly considered as an aid to a better understanding of the discussion of the law and the facts with reference to some of the counts of the indictment which follow.

One thing which should be made unmistakably clear at the outset is that this Tribunal is not a law-making institution. I violently disagree with the opinion that we are engaged in enforcing international law which has not been codified, and that we have an obligation to lay down rules of conduct for the guidance of nations in the future. Such a conception entirely misconstrues our function and our power, and must inevitably lead to error of the grossest sort. It is not for us to say what things should be condemned as crimes and what things should not. That has all been done by the law-making authority. Control Law No. 10 gives us jurisdiction only of three crimes which are described therein, namely:

1. Crimes against peace.
2. War crimes.
3. Crimes against humanity.

Crimes against peace and crimes against humanity are defined by the act. War crimes are defined in part by the act and in part as violations of the laws and customs of war. There is no claim that there are any laws and customs of war applicable here except as contained in the Hague or Geneva Conventions, or described in Control Law No. 10. Thus, a definition or description of all the crimes for which we are authorized to convict has been reduced to writing for our guidance.

We have no power to reach out and condemn and punish anything and everything which we may believe to be wrong. Unless the acts of a defendant are a crime within the terms of a statute or rule, we have no authority to declare them a crime. In a case where the defendants are charged with violating these rules, we must be careful not to violate them ourselves by declaring an act to be a crime, which is not made a crime by these rules.

We are not enforcing uncodified international law, and no one has been indicted here for violating an uncodified rule of international law. Where a crime described in Control Law No. 10 purports to be a codification of a pre-existing rule of international law, and a question of interpretation arises, we may properly

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look to the rule as it existed before such codification as an aid to the interpretation. Other than that, we have no concern with uncodified international law.

Moreover, it must be realized that these rules do not contain a complete code of laws which cover every situation which may arise during warfare. Many acts which we may regard as cruel and wrong, do not come within their terms.

As Professor Wechsler has said*:

> "Once the evil of war has been precipitated, nothing remains but the fragile effort, embodied for the most part in the conventions, to limit the cruelty by which it is conducted."

The legal question, therefore, for us to determine is not whether a particular act ought to be a crime, but whether it is a crime under the rules applicable here, always keeping in mind that we have no right to extend these rules by construction.

It is the general rule that statutes and rules defining crime must be strictly construed in favor of the accused. This means that questions involving doubtful construction should be resolved in favor of the accused.

Other questions will be considered as they arise in connection with the discussion of the convictions under the several counts of the indictment, to which this separate opinion is directed.

My disagreement with the judgment in this case is limited to convictions which I believe to be either unwarranted or exaggerated and which, in my opinion, are not justified by the law or the facts. It will, therefore, be necessary to discuss both the applicable law and facts.

It would serve no useful purpose and is obviously impractical for me to discuss all the individual convictions in all the counts of the indictment. I shall, therefore, discuss in connection with the several counts, to which this separate opinion is directed, only such individual convictions as seem necessary to illustrate my separate view.

COUNT ONE

Count one charges the defendants therein named of crimes against peace—

> "In that they participated in the initiation of invasions of other countries and wars of aggression in violation of international laws and treaties including but not limited to planning, preparation, initiation and waging of wars of aggression,

* Wechsler, Herbert, "Issues of the Nuremberg Trial, "Political Science Quarterly (1947), volume 62 (Academy of Political Science, Columbia University, New York, 1947), page 17.

and wars in violation of international treaties, agreements and assurances."

The opinion and judgment of the Tribunal convicts the defendants von Weizsaecker, Keppler, Woermann, Lammers, and Koerner of this charge.

I am unable to agree with this judgment. Rather than attempting to point out the points of disagreement with the opinion on this count, it will be simpler to present my views independent of the opinion.

THE APPLICABLE LAW

At the outset, it seems important that we consider the law applicable to the situation. Not until we know what is necessary as a matter of law to constitute guilt, can we intelligently consider the evidence bearing on the question. Unfortunately, we are met here with a surprising lack of clarity in the decisions, and with some uncertainty, and an apparent divergence of view.

Some confusion appears to have resulted from the discussion in the cases, and some of it from holdings without adequate discussion of the legal basis therefor. I shall attempt to set out in some detail, my own analysis of the legal situation and my conclusions with reference thereto, and the reasons therefor.

The law which is the basis of our authority is Control Council Law No. 10, hereinafter referred to as "Law 10," enacted by the four occupying powers, on 20 December 1945. That law is binding upon us. It is the basis for the jurisdiction of this Tribunal. We have no power or jurisdiction with reference to any crime not described in that law, and the description or definition of the crime as contained in that law is binding on us.

Law 10 defines "crimes against peace" in Article II [paragraph 1] (*a*) as follows:

> "(*a*) *Crimes against Peace.* Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war of violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing."

Some questions of interpretation arise at the outset. In the solution of these problems we must look to the language of the act primarily, and if there is still uncertainty, we must look to the historical background in an effort to arrive at the true meaning.

It must be conceded that, while the Control Council had power to enact any sort of law which it desired, the obvious purpose was

to provide machinery for the punishment of crimes which were thought to be crimes under international law existing at the time. This principle will be of some help in the matter of interpretation where it becomes necessary to resort to interpretation.

CAN THERE BE A CRIME AGAINST PEACE WITHOUT WAR?

The first question which arises is whether or not there can be a crime against peace within the meaning of Law 10 where there is no war. This is important for our consideration, because of the acts in Austria and Czechoslovakia, where troops moved in and occupied the country, but there was no war, and because of the further fact that there are some convictions here based on such actions. There are several matters which need to be considered in arriving at a proper solution of this question.

1. In the first place, the London Charter, which was adopted by the four occupying powers, and which was the basis for the prosecution of the major war criminals by the International Military Tribunal, (hereinafter referred to as the "IMT") makes no reference to "invasions" but referred only to "wars."

Law 10 states that its purpose is to give effect to the London Charter, and by its terms, the London Charter is made an integral part thereof. This being true, the description of crimes against peace contained in the London Charter [IMT charter] is also contained in Law 10, and we thus have two descriptions of the crimes gainst peace, and the problem of reconciling them.

This task must be approached with the assumption that by Law 10 there was no intention to substantially alter or change the definition of crimes against peace as contained in the London Charter, and incorporated in Law 10.

2. Moreover, the IMT held that the invasions of Austria and Czechoslovakia were "aggressive acts," but did not hold that they were "aggressive wars."

3. Law 10, by specifically referring to invasions and aggressive wars, recognizes that they are not the same thing, so that we cannot say that war includes invasions.

4. As previously pointed out, Law 10 obviously attempts to provide machinery for the punishment of crimes which were thought to be crimes prior to its enactment. Some of the authors of the London Charter have declared that it did not create any new crime against peace, but was merely a description or codification of a crime against peace, which existed prior to its adoption.

The IMT took the same view, basing its conclusion for the most

part upon the fact that some 63 nations of the world had agreed to abolish war as an instrument of national policy, in the Kellogg-Briand Pact, and some other treaties of the same general purport. But such reasoning would apply only to wars, because neither in the Kellogg-Briand Pact, nor any other treaty, so far as I am aware, is there any treaty or agreement affecting the countries here involved with reference to mere invasions—at least not invasions accomplished under the circumstances under which Austria and Czechoslovakia were invaded. The thing which is prohibited by all of these treaties is war. If we start with the premise that what was intended was to describe crimes which were already crimes under international law, we will have to exclude invasions, because there was no possible basis for claiming that a mere invasion was contrary to international law, prior to the enactment of Law 10.

5. An analysis of the language of Law 10 and its grammatical construction does not support the contention that a mere invasion is a violation of its terms. For example, it will be noticed that all of the alternative acts which the Statute provides shall each constitute the crime are separated by a comma, and the disjunctive word "or," whereas "invasions of other countries" and "wars of aggression, etc." are not so separated but, on the contrary, are united by the conjunctive word "and" which, from a purely grammatical standpoint, suggests that both are necessary to constitute the crime.

It has been suggested that such a construction is unrealistic, because it would mean that, in order for a war of aggression to be a crime against peace, it would have to be accompanied by an invasion. But it must be remembered that Law 10, in giving these Tribunals jurisdiction over certain described crimes, does not purport to describe comprehensively all of the crimes that may exist under international law. Indeed it restricts them and restricts our jurisdiction both in time and in territory.

There is nothing inconsistent, therefore, for Law 10 to limit our jurisdiction only to such crimes against peace as involved an invasion, first, because the invasion, coupled with the war, helps to emphasize its aggressive character, and ordinarily constitutes the best evidence that the war is one of aggression; and, second, because nearly all of the aggressive wars with which we have to deal, did include invasions.

Such a limitation contained in Law 10, has no effect in limiting international law generally, but only limiting the particular type of crime with which we are authorized to deal.

6. In addition, some rather absurd results follow an interpretation that invasions of other countries alone, and without war,

constitute a crime against peace. For instance, if we regard them as separate crimes, that is, if we regard invasions of other countries as a crime, and wars of aggression in violation of international law and treaties, as another crime, then any and all invasions, regardless of purpose, intention or effect, would be criminal, whereas, wars would be criminal only in the event they were aggressive, and in violation of international law and treaties, and if it is suggested that the phrase, "of aggression and in violation of international laws and treaties" applies to invasions as well as to wars, we are confronted with the obvious proposition that there are no such things as invasions in violation of international law and treaties, there are no treaties by which the nations have agreed to abandon invasions and no possible basis for the claim that an invasion without war was contrary to international law prior to the adoption of Law 10.

As to wars, there may—and indeed there seems to be—a difference of opinion as to whether initiating a war of aggression was a crime under international law, when the wars here involved were started, but at least there is substantial basis for such a claim in view of the fact that some 63 nations had joined in announcing the principle, and in a covenant to the effect that they would not resort to war as an instrument of national policy, and that Germany was a party to that covenant.

There is nothing of that sort so far as mere invasions are concerned.

7. Furthermore, it is very difficult to understand how any act can properly be described as a crime against peace, which does not constitute a breach of the peace. We are sometimes inclined to talk about the "crime of aggression," whereas the statute speaks of "crimes against peace." Confusion results. Neither the statute nor the treaties on which it is based condemn aggression. It condemns war for the purpose of aggression. Many acts may be aggressive that are short of war. They may merit the condemnation of all right-thinking people, but unless they involve a breach of the peace, it would be an abuse of language to call them "crimes against peace."

For all of the foregoing reasons, I have reached the conclusion that what happened in Austria and Czechoslovakia, where the troops of Germany marched in, but there was no disturbance of the peace, and no war, does not constitute a crime against peace.

WHEN IS THE CRIME AGAINST PEACE COMPLETE?

In view of the claim made in the opinion that all those who participated in a war of aggression knowingly, are guilty of crimes against peace, consideration must be given to the ques-

tion of what the crime is, and when it is complete. In other words, are those who participated in a war, after it has commenced, either on the economic, diplomatic, or military front, or in any other way, guilty of crimes against peace?

The prosecution, in its brief, contends that the word "waging" as used in the statute, means participation in the war in a substantial manner. The opinion gives no explanation as to the reason for its conclusion that such participation is a crime against peace.

I do not believe that a correct interpretation of the word "waging" as used in Law 10, leads to the conclusion that participation in the war, after it has commenced, is a crime against peace. According to Law 10, the crime against peace consists in "initiating" a war of aggression. The terms "planning," "preparation," "waging" are only means by which the war is gotten into motion.

The prosecution, in its brief, takes the position that the word "waging," as used in the statute, means something entirely different from "preparation," "planning," and "initiation." The principle of *ejusdem generis,* on the other hand, would suggest that it has a somewhat similar meaning, or is at least related to the previous words.

When the statute provides that "waging" is included in "initiation" it must, it seems to me, be given such meaning as relates it to initiations.

This is clearly stated in Law 10. It was not so clear under the terms of the Charter, and yet it was given such meaning by the IMT even under the Charter.

It has been claimed that there is some language in the IMT judgment decided under the provisions of the London Charter with reference to Doenitz, which appears to support a contrary view. If so, it is of minor importance in view of the numerous and definite expressions in that judgment, even as it relates to Doenitz, which show a contrary view.

For example, at the very outset of the discussion of "The Common Plan of Conspiracy and Aggressive War," the Tribunal, after saying that war was an essentially evil thing, states:*

> "To *initiate* a war of aggression, therefore, is not only an international crime; it is the supreme international crime * * *." [Emphasis supplied.]

A review of the facts stated by the IMT to support a conviction of waging an aggressive war, reveals that the emphasis is all placed upon what the defendant did before the war started, not afterward.

* Trial of the Major War Criminals, op. cit., volume I, page 186.

For example, in the case of Goering, the Luftwaffe which he commanded, and which raised havoc during the war, is hardly mentioned in connection with crimes against peace committed by him. The substance of his acts, which support his conviction, is contained in the last paragraph of the Tribunal's summing up for Goering as follows:[1]

> "After his own admissions to this Tribunal, from the positions which he held, the conferences he attended, and the public words he uttered, there can remain no doubt that Goering was the moving force for aggressive war, second only to Hitler. He was the planner and prime mover in the military and diplomatic preparation for war which Germany pursued."

In like manner, an examination of the facts stated by that Tribunal, to establish guilt of other defendants, shows that the emphasis and the facts which led to a conviction were activities of the defendants in bringing about the war, not in fighting it, or in participating in it in any way after it came into existence.

Even in the case of Doenitz, a careful examination of the case against him, as stated by the Tribunal, will show that it was what he did before hostilities actually broke out, and in reviving them after they were in fact over, that led to his conviction.

After stating the things that Doenitz did not do, the Tribunal makes this statement:[2]

> "Doenitz did, however, wage aggressive war within the meaning of that word as used by the Charter. *Submarine warfare which began immediately upon the outbreak of the war was fully coordinated with the other branches of the Wehrmacht. It is clear that his U-boats, few in number at the time, were fully prepared to wage war.*" [Emphasis supplied.]

Then, after further statements concerning the influential positions of Doenitz, occurs this very significant statement:[3]

> "As late as April 1945, when he admits he knew the struggle was hopeless, Doenitz, as Commander in Chief, urged the Navy to continue its fight. On 1 May 1945 he became the Head of State and, as such, ordered the Wehrmacht to continue its war in the East, until capitulation on 9 May 1945."

This is the final fact stated by the Tribunal in the case against Doenitz, and it must have been regarded by the Tribunal as of the highest importance. Its obvious purpose is to show that, even after the war, which began in 1939, was in fact over,

[1] *Ibid.*, p. 280.
[2] *Ibid.*, p. 310.
[3] *Ibid.*, p. 311.

Doenitz ordered further and continued attacks. If this statement serves any purpose, it is to show that he, in effect, by what he did, initiated a new war, or revived one which was already over.

If "waging" in the sense of fighting a war, or merely participating in a war, was sufficient to establish his guilt, why was it necessary to refer to this fact in order to connect him with the initiation of a new war, or the extension of a war, already in existence, after it was, in fact, over?

This, it seems to me, clearly demonstrates that, in the opinion of that Tribunal, something more than participating in a war already initiated was necessary to establish waging within the meaning of Law 10.

This conclusion becomes even more imperative when it is considered that Doenitz commanded the submarines and that these submarines wrought terrific damage and destruction all during the course of the war. Yet this fact is not even mentioned in connection with crimes against peace. If waging war, in the ordinary sense of participating in the war, constituted guilt, these facts would establish it beyond peradventure or doubt. It would have been wholly unnecessary to refer to the fact that he had his submarines ready and in a position to strike in advance of the actual outbreak of the war and that he revived the war after it was otherwise over, and to base their judgment on these facts.

The prosecution cites some authorities which I think support the view that the word "waging" referred to in Law 10 does not mean participation in the war after it is started.

For example, Justice Jackson is quoted as saying the following:[1]

> "* * * our first task is to examine the means by which these defendants and their fellow conspirators prepared and incited Germany to go to war."

It is obvious that statement must have been made in the trial before the IMT. Professor Wechsler is also quoted as saying this:[2]

> "The greatest evil is, of course, the initiation of war itself. Once the evil of war has been precipitated, nothing remains but the fragile effort embodied for the most part in the conventions, to limit the cruelty by which it is conducted."

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[1] *Ibid.*, volume II, p. 104.
[2] Wechsler, *loc. cit.*

This clearly shows that the initiation is thought to be the crime, and that, so far as participation is concerned, nothing remains but the conventions to govern it.

Moreover, where a statute codifies preexisting law, it is customary to look to the preexisting law as an aid to interpretation. The situation is not unlike that existing where the common law is in effect. Frequently a legislature will abolish common law crimes, for example, and then enact a statute defining a crime briefly which existed at common law. It is the universal practice in such instances to look to the common law definition of the crime to aid in the construction of the statute.

Here we have a one-sentence definition of an international crime which was said to exist under international law before the definition was adopted.

For a more exact definition, especially on a point which may not be clear, we certainly have a right to look to what constituted that crime under international law, as it existed prior to the adoption of the statute, especially where, as here, it was the intention to adopt a description of a crime previously existing.

The reason why wars of aggression were held to be a crime against international law, prior to Law 10, was because to start such a war would be to violate the Kellogg-Briand Pact, under which the nations agreed to abandon war as an instrument of national policy, and other treaties of the same general purport. Under that pact, what would be the crime and when would it be complete?

If the treaty prohibited the use of war as an instrument of national policy, it seems obvious that the pact would be breached when the nation resorted to a war of aggression or to serve any other national policy. An agreement not to resort to war as an instrument of national policy is breached only by resorting to war, and the breach is complete when war has begun.

The offense, then, under this preexisting international law, would consist in creating a condition of war. There is nothing in that treaty, or in any of the other treaties of similar purport, which makes it a crime to participate in a war after it comes into existence.

When a nation finds itself at war, and its very existence is at stake, there is nothing in any of these treaties which even remotely suggests that it would be a crime for the citizens of either country, under these conditions, to participate in the war and to wage war to the limit, so long as they conform to the conventions in the conduct of war. So when we consider the background of the statute, and the reasons advanced to support the findings of the IMT, that is but a re-enactment of preexisting international

law, we are forced to the conclusion that those who participated in the war, after it has been started, even with knowledge of the true character of the war, are not guilty of waging a war of aggression.

Finally, there is a conclusive reason why it must be said that those who associate themselves with a war, after it is started, cannot, on that account, be guilty, and that is the very language of the Law 10. It defines the crime as:

> "*Initiation* of invasions of other countries and wars of aggression in violation of international laws and treaties * * *." [Emphasis supplied.]

When the statute says initiation is the crime, what right do we have to say that participation is also a crime?

The word "waging," as used in the statute, is referred to by the IMT as participation in a plan to wage war. It refers to the preliminary procedure up to and including the outbreak of war, not the participation in the war, after it has been initiated.

PERSONS CAPABLE OF COMMITTING CRIMES AGAINST PEACE

One further legal question must be considered here. We have already called attention to the statement of the IMT that it is the *initiation* of wars of aggression, which are the supreme crimes. We have called attention to the fact that under the law existing prior to the London Charter, or Law 10, the offense would consist in resorting to war as an instrument of national policy.

We have called attention to the working of Law 10, which described crimes against peace as the *initiation* of invasions of other countries, and wars of aggression, etc.

The question then arises, "What action, and by whom, may be said to constitute the crime of initiating a war of aggression?" The question of whether or not a nation will wage an aggressive war is a question of national policy. Obviously not everybody in the nation is in a position to participate in the formulation of such a policy. Whatever many of them do, as individuals, is so devoid of significance or effect that it would be wholly unrealistic to say that they were a factor in determining the policy to wage an aggressive war and therefore guilty of initiating a war of aggression.

The IMT, in its judgment concerning the defendants who were convicted, lays emphasis not only on their attitude and participation in a plan to wage a war of aggression, but also on the relation

of such defendant to Hitler and the opportunities they had and the capacity they had to influence national policy through Hitler.

The comments of that Tribunal are equally significant with reference to some of the defendants who were acquitted.

For example, take the case of Fritzsche. He not only delivered the daily paroles to the press, which directed the propaganda campaign in the press, and which were obviously very important in conditioning the minds of the German people for war, but he subsequently delivered radio addresses. These he apparently prepared himself, yet the Tribunal held him not guilty. It did not even go into the question as to whether he knew of a plan to wage a war of aggression. It speaks of Fritzsche's lack of position and influence in the Third Reich, and the further fact that he had never had a conversation with Hitler. It thus appears that position and influence, and standing with Hitler, were thought to be important, in order to play a part in initiating a war.

Of course, mere proximity to Hitler, such as a secretary or adjutant would have, would not be controlling. But in view of the power Hitler had, it is a factor in determining whether a person participated in the initiation of a war or not. To participate, requires, in addition, a position of power and influence, and the use of it, for the purpose of initiating a war, knowing the war will be one of aggression.

There is another thing about the holding as to Fritzsche that is significant. The Tribunal said he was but a conduit for the transmission of the daily paroles, and that he prepared and formulated daily radio paroles "according to the general political policies of the regime."

This suggests that people who are in a subordinate position, and who merely carry out tasks assigned them, according to the general political policies of the Nazi regime, are not in the class of people who can be said to have knowingly and willfully participated in a plan to wage a war of aggression. It suggests a substantial limitation on those who may properly be said to have committed crimes against peace.

The Tribunal in the Farben case in considering this question said in substance that the IMT had placed the dividing line just below the policy-making level. In other words, only those persons who were on a policy-making level could be liable for the commission of crimes against peace.

This statement was reaffirmed, at least in principle, in the Krupp case, and again in the High Command case. These holdings are persuasive and I think they are correct.

Who then are the people on the policy-making level?

A comprehensive definition will not be attempted. This much may, however, be said on the subject. Only those are included, regardless of title or official position, who, by reason of their position of power, are able to exercise, as a matter of free choice, influence on the governmental policy, so far as the question of going to war or refraining from going to war is concerned. The attitude or actions of others would be without significance or effect, and they could not, therefore, be said to have been a party to the initiation of a war. As to each defendant, therefore, we must seek the answer to the following three questions:

1. Did he knowingly engage in some activity in support of a plan or purpose to induce his government to initiate a war?

2. Did he know that the war to be initiated was to be a war of aggression?

3. Was his position and influence, or the consequences of his activity such that his action could properly be said to have had some influence or effect in bringing about the initiation of the war on the part of his government?

Only if all of these questions are answered in the affirmative will we be justified in finding a crime against peace has been committed.

It appears without question that the wars in connection with which some of the defendants in this case have been convicted were wars of aggression. It was so found by the IMT, and there is no occasion to discuss that question further. There is, as previously indicated, a question as to whether there was any aggressive war in Austria and Czechoslovakia, where German troops marched into the country. But this question has previously been discussed. There remains, therefore, for consideration, only the question as to whether the evidence establishes the guilt of the defendants according to the tests above outlined.

It seems to me unfortunate that the opinion quotes a statement of the IMT which was made with reference to the conspiracy count. The defense in that case had argued that there could not be a common plan or conspiracy in a dictatorship, because the dictator alone made the plans.

The Tribunal, in dealing with this question, in effect said, with reference to those who were fully advised of Hitler's plans and purpose, that those with knowledge of his plans, who gave him their aid, were liable. The statement, standing alone, and without reference to the context, and the fact that a common plan or conspiracy was under discussion when the statement was made, is misleading.

In the first place, it must be borne in mind that Hitler's plan therein referred to was the common plan or conspiracy to wage

aggressive war—a plan which the IMT held must be concrete and definite and not too far removed from the time of action. Also the "aid" referred to was to help bring the plan into realization by the initiation of the war involved in the plan. It does not include the performance of the normal functions of a civil servant.

Obviously, that statement cannot properly and literally be applied to anyone charged in this count. This is not a conspiracy count. The conspiracy count, which is count two, has been dismissed and it has thereby been adjudicated that the defendants were not parties to any common plan or conspiracy. What the defendants are charged with is what the IMT called, "waging." That is participation in a plan or a purpose to initiate a war, knowing that it was to be a war of aggression.

VON WEIZSAECKER

Von Weizsaecker is convicted because of his alleged participation in the initiation of the invasion of Czechoslovakia, or that part of Czechoslovakia which remained after the Sudetenland had been ceded, and Slovakia had declared its independence.

In my view, he is not guilty for two reasons. One, the invasion of Czechoslovakia was not a crime against peace, because there was no war, and no disturbance of the peace. Two, he took no part in bringing about or initiating such an invasion.

The first proposition has already been discussed. I turn to the second.

The opinion states in substance that von Weizsaecker did not originate the invasion and forcible incorporation of Bohemia and Moravia, and that we do not believe he looked upon the project with favor.

In spite of this concession, he is convicted. The opinion states, in substance, that although the defendant von Weizsaecker was not present at the conferences where Hitler announced plans of aggression, he became familiar with them from reliable sources, that is, von Ribbentrop, Canaris, leading generals of the Wehrmacht, and others, who furnished him with accurate information.

That is the first I have heard in this case of any such claim and, so far as I am aware, there is no evidence to support it. It is true, of course, that von Weizsaecker received some information as to what was actually going on, which may not have been generally available, but it has not been suggested heretofore, that he received information with reference to these conferences, where the common plan and conspiracy to wage an aggressive war were formed.

It is significant that on such an important matter no evidence is cited or referred to in support of the statement. Significantly, it appears elsewhere in the opinion that von Weizsaecker was not in von Ribbentrop's confidence and that they did not get along very well.

It is my judgment, based on the evidence in this case, that von Weizsaecker's knowledge of planned, future developments in the field of foreign policy, as it affected war, was limited to inferences which he was able to draw from what was going on about him. This was consistent with the secrecy regulations which were rigorously enforced in the Reich, and which provided that no one should be told of what was being done or planned with reference to matters of this sort, except that an official might be told what was necessary for him to know in order to perform his duties. But only so much was to be told as it was necessary for him to know, and not that until the time came when he must know.

For example, von Weizsaecker was not told of the planned invasion of Denmark and Norway until about 3 days before the invasion occurred, and after the German troops had departed, and was told then only because it was necessary for the Foreign Office to prepare and communicate a statement to be delivered to the Danish and Norwegian Governments.

Now what is the evidence on which the opinion relies to convict von Weizsaecker which indicates that he aided in the initiation of the invasion of Czechoslovakia? What he did before the marching in of the German troops, according to the opinion, is the following.

He received a memo from von Ribbentrop of an interview with Hitler which had to do with the relations with Hungary. It does not indicate that Hitler had any intentions of military action against Czechoslovakia. The balance of the evidence consists of memos of interviews with representatives of foreign governments, such as Britain, France, Italy, and Czechoslovakia, concerning a guaranty which Germany had agreed to give in the Munich Agreement.

In all of these interviews von Weizsaecker tried to avoid, excuse, and justify the failure and refusal of his government to enter into such a guaranty. But what did all of that have to do with the invasion which followed?

If the guaranty had been entered into, would the invasion have been less likely to follow? Hitler was not embarrassed by treaty obligations in his other campaigns. What reason is there to suppose that he would have been restrained by this one, especially since the so-called invasion or marching in of troops was carried out in accordance with, or as a result of, an agreement

on the part of the President and the Foreign Minister of Czechoslovakia?

But even more important than that, what could von Weizsaecker do about it? He was not in charge of the foreign policy of the Reich. It was not for him to decide whether such a guaranty should be entered into or not. He could not control that. If his government did not want to enter into such a guaranty, he could not compel it to do so.

It would be wholly unrealistic to suppose that von Weizsaecker had any control over such matters. He did not make the policy. He could only reflect the facts as to whether or not his government was willing to enter into such a guaranty. All he could do, and all he did do, was to make the best case in behalf of his government that he could, and that does not indicate any purpose or intention on his part to encourage a military assault on Czechoslovakia, nor did it, in fact, encourage such an assault.

These interviews do not appear to have had any connection whatever with Hacha's visiting Berlin, and with his submitting to Hitler's will, and his opening the door for the entry of the German Army, nor does it appear that they were intended to have such purpose. These interviews did not initiate, and had no connection with the initiation of that proceeding, and they are in no way connected with it.

The opinion then sets out a number of interviews with these same foreign representatives, which von Weizsaecker held following the absorption of Czechoslovakia, in which he defended the action which his government had taken, and claimed it was the result of an agreement between the two states, and that other governments had no grounds for complaint.

The opinion seems to lay stress upon what happened subsequently, and to draw from it the conclusion that von Weizsaecker played a consenting part. There is a suggestion also that what von Weizsaecker did following the absorption of Czechoslovakia was an implementation of the enterprise.

I am unable to support this line of reasoning. If what happened with reference to Czechoslovakia was in fact a crime against peace, von Weizsaecker could be found guilty in my judgment, only if he affirmatively did something to initiate the enterprise, and did it with the intention of initiating the enterprise. Evidence of that sort is entirely lacking.

The opinion reveals that von Weizsaecker had played a heroic part in an effort to preserve decency and peace. Because he was silent in this instance he is convicted, although evidence is lacking that he had advance notice of Hitler's purpose sufficient to enable

him to attempt anything effective to prevent it, if indeed, there was anything he could have done under any circumstance.

But, in my judgment, his failure to do anything to prevent the proceedings, even if he had had an opportunity, cannot be regarded as a crime. He does not commit a crime against peace in any event, by inaction. Something affirmative is required.

It is not possible to examine and discuss the other convictions under this count in detail, and no useful purpose would be served thereby. It is sufficient to say that not in any of them is there any evidence to show that the defendants did anything affirmatively to initiate a war, knowing it was to be a war of aggression.

Woermann was the head of the political division in the Foreign Office, and as such, subordinate to von Weizsaecker and to von Ribbentrop. He is convicted because of certain diplomatic messages he sent which are described in the opinion. The only ones which relate to a possible future war are those sent to Slovakia. They are obviously messages which originated with the army and have to do with coordinating military action in case of attack.

The Foreign Office is, of course, the only appropriate channel of communication between nations. In transmitting these messages the Foreign Office acted merely as a transmission line. It is hardly to be supposed that these messages represent Woermann's plan. He was not running the army, nor planning military cooperation with Slovakia in case of attack. It was a proper precautionary measure in any event. But it was in fact, as we know now, a preparation for attack on Poland. But it was disguised as a defense arrangement. It was so represented to Slovakia, and there is no reason why Woermann should have recognized at the time that it was an act of preparation for a war of aggression against Poland. But if he had recognized it, I do not see what he could have done about it. He was a subordinate in the Foreign Office. The Foreign Office was available for such communications regardless of what Woermann may have thought about the matter.

None of the other matters cited in the opinion have anything to do with initiating the war against Poland. Indeed, many of them are concerned with events happening after the war was over. For instance, there is a message sent by him stating that a certain Polish Bishop would not be permitted to return to Poland after the war. This could have no connection with initiating that war, in any event. Moreover, the message merely conveyed the decision of his government. It would be wholly unrealistic to suppose that it was up to Woermann to decide whether the return of the Bishop should be permitted or not.

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This and many other like items of evidence cited in the opinion seem to indicate that the controlling consideration, so far as the opinion is concerned, is whether or not, in what the defendant did, he acted in sympathy with the Reich program or in opposition to it. And if it can be found that the things he did are in harmony with the Reich program, no matter how innocent the acts in themselves may be, the opinion seems to hold that he then cooperated with or implemented such program. Of course, under such a formula, one may be held to participate who merely writes a letter or receives one, or forwards a report, no matter how harmless these documents may be in themselves.

In my judgment, the field is not that open. To be guilty—I repeat—the defendant must have participated in the initiation of a war of aggression. In order to do that, he must have committed some act intended to have some effect in bringing about a war, knowing it would be a war of aggression. That kind of evidence is conspicuous by its absence here.

KEPPLER

As to Keppler, his activities were in Austria, where there was no war, and this, in itself, in my judgment, is a complete defense to the charge.

Moreover, there is no indication that he worked there with a view of initiating a war. His job was to seek a union with Austria by peaceful means. Since all the political parties in Austria favored a union, it was not unreasonable to suppose it could be accomplished.

The conditions requisite for such a union had already been accomplished before the German troops entered Austria. A government favorable to such a program had been established before the troops moved in.

That Keppler did not favor the entry of the troops is shown by his statement quoted by the IMT. When Goering telephoned Keppler to have Seyss-Inquart send a telegram requesting German troops to enter Austria to prevent bloodshed, Keppler replied:*

> " 'Well, SA and SS are marching through the streets, but everything is quiet.' "

This indicates pretty clearly that Keppler did not favor the entry of German troops and that he believed it unnecessary.

The opinion does not cite any facts or evidence to support the proposition that Keppler initiated, or helped to initiate, an invasion of Austria. His guilt seems to consist in an interference with Austrian affairs. But this is not a crime against peace.

* Trial of the Major War Criminals, op. cit., volume I, page 193.

As to the defendants who were convicted because of their activity in the Four Year Plan, it does not appear that they knew that preparation was being made for an aggressive war. There is no doubt that the Four Year Plan, at least in its later stages, was engaged in preparation for war on a rather large scale, but every nation engages in military preparations. Such preparations are as useful for defense as for aggression.

Hitler, up to the outbreak of the war in 1939, repeatedly declared that such preparations were for defense, and there was great emphasis placed on the danger which confronted Germany from without. Those who engaged in production of armament and military preparation are not liable unless they do so for the purpose of preparing for a war of aggression. Proof of this essential fact is lacking.

The same consideration, of course, applies to other kinds of defense preparations, such as defense councils and defense committees, and other types of civil and government organization.

Lammers is held largely because of his preparation of decrees and other documents for Hitler. The nature of his work and the liabilities of one who merely formulates decrees and other official documents, is discussed under count six of this separate opinion. It is sufficient here to say that he was, in the words of the prosecution, "Hitler's faithful servant," exercising clerical and secretarial functions and drafting decrees as a technician in that field.

He was the office chief of Hitler's office, as Chancellor, and served Hitler in the civilian sector of government. Hitler had other offices through which he exercised other functions, including military functions. Lammers was not concerned with policy. He exercised no policy-making functions. While he held the title of Minister, it was purely honorary. He exercised the functions of a State Secretary. He cannot properly be said to have been on a policy-making level, or to have exercised any influence or power in the direction of initiating a war.

In my view, none of the defendants convicted under this count can properly be held to have participated in a plan to wage a war of aggression, or of exercising any activity with the intention or purpose in view of starting or initiating such a war, and if such a construction could possibly be placed on their activities, it does not appear that they had any influence or effect in bringing about a state of war. Neither they nor their activities appear to have had any influence on Hitler. They were not the people on whom Hitler relied for guidance and support in such mat-

ters, and their actions were without significance, so far as the initiation of the war with which they are charged, is concerned.

COUNT THREE

Count three charges the defendants therein named with participation in the murder of prisoners of war and belligerents engaged in the war against Germany.

RITTER

Ritter is alleged to have participated in such murders because of two incidents, to wit:

1. The murder of Allied fliers;
2. The Sagan murders.

The murder of Allied fliers refers to the lynching of Allied fliers who bailed out of their planes after allegedly making machine gun attacks on civilians on the highways or in the fields, while flying at low altitude. In the interest of brevity they will be referred to here merely as, "Allied fliers."

That such incidents occurred, and that Allied fliers were lynched and murdered, and that such acts were indefensible murders, is well established. If it be conceded that these Allied fliers had made attacks on civilians as claimed by the defense, the remedy was not lynch murders. They were entitled to be taken as prisoners of war and if they committed war crimes they were subject to trial and punishment in accordance with the rules of the Hague and Geneva Conventions. There was no excuse or justification for murdering them.

Our task here is to determine whether the defendant Ritter had any criminal responsibility for such murders. It would seem almost superfluous to suggest in a legal opinion that a person to be guilty under this charge must have himself murdered prisoners of war or ordered others to do so, or at least performed some act or non-act which had a causal connection with such murders and was performed with the intention of causing or assisting in causing such murders.

Ritter became attached to the German Government as a civil servant before the First World War. He served first in the Colonial Office. He was a soldier during the First World War. He joined the Foreign Office in 1922. His work there was mostly in the field of economics and in connection with commercial matters. He worked on reparations after the First World War, and negotiated many trade treaties subsequently for Germany. He became Ambassador to Brazil in 1937. He was withdrawn from

that position due to Party opposition. He had reached retirement age, and asked to be retired, but was not permitted to do so. He was made Ambassador for Special Assignments in the Foreign Office.

After the war broke out he was made liaison officer between von Ribbentrop, the Minister of Foreign Affairs, and Keitel, the head of the armed forces. The functions of that position are indicated by the title. His job was to maintain contact or liaison between these two top officers, and to facilitate communication between them. For that purpose he maintained field headquarters not too far removed from either. He had no authority to determine policy, or to make any decisions concerning policy either for the Foreign Office or for the army. The purpose of liaison was to keep each informed in matters which concerned both and to facilitate negotiations between them, and to enable the two officers to better coordinate their efforts.

It is no doubt true that where differences arose he was free to make suggestions, and did make suggestions with a view to enabling the parties to reach a common agreement or understanding.

On 15 June 1944 Ritter received from Keitel, as stated in the opinion, a proposed program of procedure concerning the mistreatment of Allied fliers, and Keitel requested the opinion of the Foreign Office with reference thereto. The Foreign Office was naturally consulted because it would be required to answer protests received from the protective powers of enemy countries.

This communication requested the opinion of the Foreign Office by the 19th. On the 18th Ritter telephoned that the opinion of the Foreign Office could not be delivered by the 19th because it would be necessary to contact Berlin. On the 25th of the month Ritter wrote to Keitel's office, transmitting (*PS–735, Pros. Ex. 1232*):

> "For your preliminary information, the draft of a reply to the Chief of the Supreme Command of the Armed Forces in answer to his letter of 15 June. The draft has been submitted to the Reich Foreign Minister.
>
> "Since the Reich Foreign Minister is away on travel for several days, he was not able, as yet, to give his approval to the draft."

This draft had Ritter's name typed at the end of it, and was obviously prepared in the form of a letter to be sent by Ritter, but Ritter drew a line with a pen through his name and marked it "draft," and wrote a separate letter enclosing it, as above stated.

Ritter's conviction is based on his alleged authorship of this draft, or his transmittal of it to Keitel's office. The draft is an expert legal opinion and deals particularly with the Geneva Convention, and the rules developed thereunder. It bears every evidence of having been prepared by an expert in that field. Ritter was not such an expert. His specialty was economics. No witness testified that Ritter prepared it. He testified that he did not. The circumstances all confirm his statement.

There is the circumstance that he telephoned that the attitude of the Foreign Office could not be transmitted until he contacted Berlin. There is the long delay in formulating the Foreign Office opinion. There is the fact that Keitel asked for the Foreign Office's opinion, and the further fact that the draft did contain the Foreign Office's opinion, as von Ribbentrop's subsequent approval shows. There is nothing whatever in the evidence to suggest that Ritter prepared it.

The opinion relies wholly upon the fact that it bears a stamp of having been in his office, but that circumstance proves nothing as to where it was prepared. There was no claim in the trial or in the argument that the markings, or absence of markings on the draft had significance. It appears for the first time in the opinion. Under such circumstances it is a pretty slender reed on which to hang a conviction.

It is true that the draft, although making several objections based on international law, does recite that the Foreign Office agrees in principle, but as will hereafter appear, von Ribbentrop had already agreed in principle. This fact was unknown to Ritter and this is another circumstance which indicates that von Ribbentrop's office prepared the draft, or that it was done under pretty close supervision by von Ribbentrop, and that Ritter did not prepare it. It seems to me that the finding that Ritter prepared the draft is contrary to the evidence.

The important thing, however, is that nothing came of the draft. It had no consequence whatever. Ritter's communication to Keitel's office gave notice that von Ribbentrop's approval was subject to Hitler's approval, and that he would not give his final approval until Hitler had approved.

It further appears, without dispute, that Sonnleithner, of von Ribbentrop's office, was to present the matter to Hitler. This circumstance suggests that he may have had something to do with the preparation of the draft. In any event when it was presented to Hitler, Hitler said it was "nonsense," according to von Ribbentrop's testimony before the IMT, and nothing was ever done about it. It never went into effect. No orders were ever

issued because of it. It could not possibly, under any circumstances, be the cause of the murder of Allied fliers.

There is another circumstance which shows that Ritter took no part in the formulation of any policy with reference to Allied fliers. On 28 May Jodl asked Ritter about the radio campaign then being put on by Goebbels, with reference to these Allied fliers, and what was proper to be done to resist them. Ritter replied that he "should apply to a legal expert."

The manner in which this policy of lynching of Allied fliers was initiated and developed is clearly shown in the evidence, and it clearly appears that Ritter had nothing whatever to do with it. The IMT, in its judgment concerning Bormann stated:[1]

> "Bormann is responsible for the lynching of Allied airmen. On 30 May 1944 he prohibited any police action or criminal proceedings against persons who had taken part in the lynching of Allied fliers. This was accompanied by a Goebbels' propaganda campaign inciting the German people to take action of this nature, and the conference of 6 June 1944, where regulations for the application of lynching were discussed."

The same Tribunal, in its judgment against von Ribbentrop stated:[2]

> "Von Ribbentrop participated in a meeting of 6 June 1944, at which it was agreed to start a program under which Allied aviators, carrying out machine gun attacks on civilian population, should be lynched."

This conference was held with Hitler at Hitler's headquarters, and Keitel and Jodl of the armed forces, as well as von Ribbentrop, were in attendance. This clearly demonstrates that the Foreign Office, or rather von Ribbentrop, the Foreign Minister, had agreed to this general policy on 6 June, at a conference which Keitel also attended, so that when Keitel addressed the communication to von Ribbentrop on 15 June it was not to seek his opinion about the general policy, but rather the details of a program to put the policy into effect, and this involves technical procedures upon which Ritter obviously was not qualified to act, and did not attempt to act.

On 4 July, Hitler issued the following directive (*741–PS, Pros. Ex. 1238*):

> "According to press reports the Anglo-Americans intend to subject to air attacks, small localities without any war, economic or military value, as a reprisal against V–1. In the event this report proves true, the Fuehrer orders that notices

[1] Trial of the Major War Criminals, op. cit., volume I, page 340.
[2] Ibid., p. 287.

be served by way of radio and the press that every enemy aviator who is shot down while participating in such an attack, is not entitled to treatment as a prisoner of war, but that he will be killed as soon as he falls into German hands. This rule shall apply to all attacks on small localities which constitute neither military targets nor communication targets, etc., and are, therefore, of no military significance."

As stated in the opinion, this order was actually put into effect and became the official policy.

It will be noted that this statement of Hitler's provides no machinery of any kind for determining whether Allied fliers who bailed out had attacked civilians or nonmilitary objects, and it contains no definition of "nonmilitary" objects. The inevitable result was to make all bailed-out fliers subject to attack according to the judgment or opinion of the attacker.

The opinion of the Foreign Office which Ritter transmitted would have been an improvement on this, but it had no effect. It was declared to be nonsense and discarded. This order of Hitler's had its origin in the Bormann action, and the conference of 6 June. It was uninfluenced in any way by any document which Ritter even touched.

My conclusion is that Ritter played no part in this transaction, except the normal function of liaison; that he porformed no act, not even of liaison, which has a causal connection with the death of any Allied fliers, and that what he did indicates no criminal intention whatever, and I am unable to follow the reasoning which leads to the conclusion that he is guilty of participating in multiple murders.

SAGAN MURDERS
STEENGRACHT VON MOYLAND AND RITTER

In connection with this incident not only Ritter but also Steengracht von Moyland, who was then State Secretary in the Foreign Office, are convicted—Ritter because it is claimed he helped prepare a diplomatic note, and Steengracht von Moyland because it is claimed he dispatched it.

It is doubtful if the indictment charges any such crime against Steengracht von Moyland, and it is certain that it does not against Ritter.

Unfortunately, the opinion attempts to abstract rather than to quote what the indictment charges in count three, and by the process of reversing the order of statement, greatly enlarges the scope of the charge. What the count charges has already been stated in substance, but in view of the confusion at this point, and

in aid of a better understanding, it may be well to quote it verbatim:

"27. The defendants von Weizsaecker, Steengracht von Moyland, Ritter, Woermann, von Erdmannsdorff, Lammers, Dietrich, and Berger, with divers other persons, during the period from September 1939 to May 1945, committed war crimes, as defined in Article II of Control Council Law No. 10, in that they participated in atrocities and offenses against prisoners of war and members of the armed forces of nations then at war with the Third Reich or were under the belligerent control of, or military occupation by Germany, including murder, ill-treatment, enslavement, brutalities, cruelties, and other inhumane acts. Prisoners of war and belligerents were starved, lynched, branded, shackled, tortured, and murdered in flagrant violation of the laws and customs of war, and through diplomatic distortion, denial, and fabricated justification, the perpetration of these offenses and atrocities was concealed from the protecting powers. The defendants committed war crimes in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations and groups connected with, the commission of war crimes."

It will be noticed that what is charged here is participation in the murder of prisoners of war and belligerents of countries at war with Germany. All other allegations are but means by which it is claimed the crimes were committed.

The indictment is so framed that the first paragraph of each count charges the crime. In succeeding paragraphs is stated, by way of a bill of particulars, what each defendant did to constitute his guilt of such charge. The legal sufficiency of such statements in the paragraphs to sustain the charge is, of course, a legal question for the Tribunal.

Paragraph 28*c* is the one which describes the acts of Steengracht von Moyland and Ritter which it is claimed constitute their guilt, and the opinion specifically finds them guilty of the crimes set forth in said paragraph. It is as follows:

"28*c*: In March 1944, approximately fifty officers of the British Royal Air Force, who escaped from the camp at Stalag Luft III where they were confined as prisoners of war, were shot on recapture. The German Foreign Office was fully advised and prepared "cover up" diplomatic notes to the Protecting Power, Switzerland. Von Thadden of the German Foreign Office wrote to Wagner, a subordinate of the defendant Steengracht von Moyland, stating that a communication was being sent to Great Britain via Switzerland to the effect that,

in the course of a search 'a number of British and other escaped officers had to be shot, as they had not obeyed instructions when caught.' In furtherance of this policy to shoot escaped prisoners of war upon recapture, the defendant Ritter, issued a warning notice, disclosing the creation of so-called 'death zones' for the alleged protection of 'vital installations' wherein 'all unauthorized persons will be shot on sight.' A letter from the German Foreign Minister to the defendant Ritter in July 1944, stated that the Fuehrer was in agreement with the German Foreign Office communication to the Swiss Embassy concerning the escape of the prisoners of war from Stalag III, and that he further agreed to the issuance of the warning notice and the forwarding of such a communication to the Swiss Embassy."

It will be noted that this paragraph does not charge Steengracht von Moyland with having done anything. It simply charges that someone wrote a letter to his subordinate. It charges Ritter only with having written warning notices of danger zones, a charge on which, by the opinion, he is acquitted.

It has been the settled view of these Tribunals that no defendant should be convicted on a charge not mentioned in the bill of particulars contained in the paragraphs of the indictment. Indeed such would have to be the rule if indictments are to mean anything. Otherwise, Ritter would appear to defend under count three for having posted warning notices of danger zones in prisoner-of-war camps, and find himself convicted of an entirely different charge. That is what has actually happened.

Tribunal No. I in Case 1 (Doctor's [Medical] Case) stated the rule as follows:*

"However, no adjudication either of guilt or innocence will be entered against Rose for criminal participation in these experiments for the following reason: In preparing counts two and three of its indictment, the prosecution elected to frame its pleading in such a manner as to charge all defendants with the commission of war crimes and crimes against humanity generally, and at the same time to name in each paragraph dealing with medical experiments only those defendants particularly charged with responsibility for each particular item.

"In our view this constituted, in effect, a bill of particulars and was, in essence, a declaration to the defendants upon which they were entitled to rely in preparing their defenses, that only such persons as were actually named in the designated experiments would be called upon to defend against the specific items. Included in the list of names of those defendants specifically charged with responsibility for the malaria experi-

* United States *vs.* Karl Brandt, et al., Judgment, volume II, this series, pages 266–267.

ments, the name of Rose does not appear. We think it would be manifestly unfair to the defendant to find him guilty of an offense with which the indictment affirmatively indicated he was not charged."

If we are to follow this rule—and there is no reason why we should not—there should, on that account, be no conviction here as to either Steengracht von Moyland or Ritter, and especially not Ritter.

But, passing that, the evidence does not warrant a conviction in any case.

It is probably unnecessary to say more about the facts than appears in the opinion, in order to demonstrate that neither Steengracht von Moyland nor Ritter is shown to be guilty of participation in the murder of these unfortunate British prisoners of war who had escaped from prison. But before approaching that question, some correction and supplementation of the facts seems appropriate. It will then appear, I think, that they are not guilty of anything.

Complaint is made in the opinion as to the [two] notes sent to Switzerland as Protective Power for Great Britain. Both were introduced as rebuttal documents (Exhibit C–372) [*NG–5844*] which, when considered in connection with the absence of a specific charge against Steengracht von Moyland and the complete absence of a charge against Ritter with reference thereto, raises a further question as to the propriety of considering them in connection with a substantive, affirmative charge against these defendants.

On 26 May, the German Foreign Office received an inquiry (*NG–5844, Pros. Ex. C–372*) from the Swiss Government, as Protective Power for Great Britain, about the reported death of British prisoners of war who had escaped from a prison camp in March, preceding. It was Ritter's task, as liaison man with the armed forces, to investigate this matter. There is no indication that he had ever heard of it before receiving this assignment.

Keitel denied any knowledge of the matter, but gave some indication that these prisoners had escaped from the prison camp and were captured by the police. Ritter then contacted the police and was furnished perfect records, showing these men were shot while resisting arrest.

Albrecht, the head of the legal division of the Foreign Office, had been summoned by von Ribbentrop from Berlin to Salzburg, where von Ribbentrop maintained his headquarters, to prepare a reply to this inquiry from the Swiss Government. Ritter thought these records of the police were a "swindle" and so advised von

Ribbentrop and Albrecht. He told the police the same thing, and they did not resist the idea very strongly.

Albrecht prepared the reply note. The opinion convicts Ritter largely because Albrecht says he prepared the note after talking to Ritter. Of course he talked to Ritter. He would hardly prepare the note at von Ribbentrop's invitation without talking to the man who investigated the facts. There is no claim that Ritter deceived him. He could not report anything more than what had been reported to him. He told Albrecht what the police reported, and also that he thought it was a swindle. What more could he do? And after the note was prepared, both Albrecht and Ritter advised von Ribbentrop not to send it. Von Ribbentrop, of course, as Foreign Minister, completely controlled what note, if any, should be sent. Ritter had no control over that.

What von Ribbentrop did with it, and whether or not he sent it, and whether or not the note in evidence which apparently came from the British Foreign Office files was the one Albrecht prepared, does not appear. But, assuming that it was sent, and that the copy in evidence is a true copy of what Albrecht prepared, Ritter has committed no crime.

Whether or not Steengracht von Moyland dispatched the note at von Ribbentrop's orders, or had anything to do with it, does not satisfactorily appear. No names are attached to the notes in evidence. But if he did sent it, as the opinion states, it was by order of von Ribbentrop and without any knowledge as to its incorrect statements. At least the evidence fails to show he had any knowledge that it contained incorrect statements.

As to the second note it does not appear that Ritter had anything to do with that. Steengracht von Moyland has some recollection of it. But it was obviously a high policy matter for which Hitler and von Ribbentrop were responsible. At least it does not appear that Steengracht von Moyland prepared it or dispatched it. The opinion seems to take the view that because he stated he had no clear recollection of it, that such statement is evidence that he did send it.

It thus appears that neither Ritter nor Steengracht von Moyland had any part in a deliberate fabrication of a falsehood to be sent in a diplomatic note to Great Britain. Steengracht von Moyland had nothing to do with the preparation of the note and was not informed as to its incorrectness when at the direction of the Foreign Minister, he dispatched it, if he did dispatch it.

Ritter reported truthfully and fully as to the facts revealed in his investigation. Albrecht prepared the note. Von Ribbentrop, the Foreign Minister, controlled the matter of sending it after being fully advised as to the facts as was possible at the time.

But even if it be conceded *arguendo,* that Ritter and Steengracht von Moyland deliberately and intentionally played a part in sending a false note, the crime would not be participating in the murder of the British prisoners of war, which took place some 2 months before they ever heard of it.

It later came to light, and is now known, that Hitler issued a direct order to the police to run down these escaped prisoners of war and kill them. There is no suggestion in the evidence that Ritter or Steengracht von Moyland knew this at the time these notes were prepared and dispatched, or that they had any other information than that contained in the note prepared by Albrecht at Salzburg.

I am unable to follow the reasoning which leads to the conclusion that Steengracht von Moyland and Ritter are guilty of participating in murders which occurred 2 months before they heard of them, or took any action with reference to them.

LAMMERS

What has heretofore been said in the discussion of the case against Ritter and his alleged participation in the murder of Allied fliers is equally applicable to other defendants so charged in count three, including the defendant Lammers. He is charged, because of a letter (*635–PS, Pros. Ex. 1229*) he wrote to the Minister of Justice on 4 June transmitting the circular decree of Bormann dated 30 May.

In transmitting this decree Lammers was performing the normal functions of the Chancellery. It was a sort of secretariat which served the Chancellor much as any secretarial organization would serve the head of a government. It was the proper avenue through which approaches were made to the Chancellor, and was the mechanism designed to distribute communications of all kinds from the Chancellor to the ministries or other agencies of government.

Lammers, as head of the secretarial organization known as the Chancellery, had no right to decide what he would or would not distribute. He had no choice in the matter. In performing that purely clerical or ministerial task, he could hardly be charged with criminal intent in any situation. He gave no orders, and of course, had no authority to do so. He did call attention to the respect in which the decree might be applicable to the operations of the Ministry of Justice.

If the Ministry of Justice did anything as a result, it was done because of the decree of Bormann, not because of Lammers' letter transmitting it.

But the conclusive circumstance that Lammers' letter, even if it

led to the dismissal of prosecutions of people who had engaged in lynching (and there is no evidence that it did), could not have thereby encouraged future lynchings is the fact that the police had already been prohibited from interfering with lynchings, and this was accompanied by a radio campaign. (See quotation from IMT, *supra.*) The dismissals, therefore, if there were any, were the *result* of a public policy of authorized lynchings, not the *cause* of it. It can hardly be claimed that the letter had any causal connection with the lynchings which had already taken place.

BERGER

Berger is convicted of participation in the murder of the French General, Mesny, a prisoner of war. That General Mesny was brutally murdered in reprisal or revenge for the alleged shooting, by the French Maquis, of a German general, and that this was done on direct order of Hitler, given to Keitel, there can be no doubt. Our task is to determine whether or not defendant Berger had any criminal responsibility for the crime.

Berger held many positions in the SS. He was Lieutenant General in the SS and the Waffen SS; liaison officer between the Reichsfuehrer SS and the Reich Minister for the Occupied Eastern Territories; Chief of the political directing staff of the Reich Minister for the Occupied Eastern Territories; Supreme Military Commander in Slovakia in 1944, and Chief of the Postal Censorship. He obviously could not devote all of his time to any one of them. In addition to these tasks, he was made Chief of Prisoner-of-War Affairs under Himmler, and subordinate in that function not only to Himmler but to Keitel, and of course, Hitler as well.

The office had previously existed under that same name, Chief of Prisoner-of-War Affairs, in the organization of the army. Berger, upon his appointment, assumed that title so that the term Chief of Prisoner-of-War Affairs, may refer to the agency or to the person of Berger, and it is important to know in every case in which sense it is used. In the documents which the opinion cites, the agency is referred to because the evidence shows, without dispute, that Berger did not sign any of these documents. Some of them were signed by Meurer, who was his Chief of Staff in Prisoner-of-War Affairs, and in charge of the office, and who was in the habit of signing Berger's name to documents involving the agency.

Meurer was a witness for the prosecution and conceded these facts.

Berger began taking over the agency on 1 October and had completed a considerable portion of the task by 23 October, but the complete take-over did not take place until about the middle of November. When Berger took over the agency, he took over the personnel of the agency with him. These were all Wehrmacht men who belonged to the armed forces under Keitel.

Berger's first knowledge of the proposal to execute a French general came to him from Meurer early in November. Meurer, as a prosecution witness, testified to Berger's reactions as follows (*Tr. p. 2351*):

> "He was horrified at the teletype letter and the whole contents of the telegram and he immediately said in no case would he agree to this, and under no circumstances would he have the matter carried out."

Further, in cross-examination, he testified (*Tr. p. 2376*):

> "When the written order came in he at once and spontaneously declared that he would not have carried out an order of that sort; he also stated that he would immediately contact Himmler on this matter, and, if necessary, would contact the Fuehrer himself."

The evidence shows that he did attempt to contact Hitler, but that Hitler would not receive him. Before he was able to contact Himmler, Berger was injured, early in the month of November, as a result of being buried alive in debris in a bombing raid, and was confined to the hospital for at least 2 weeks.

Upon his return from the hospital he inquired of Meurer what, if anything, had been done about the matter, and learned that there had been no further developments. He went to southwest Germany to see Himmler at Freiburg, and finally contacted him at Ulm, and after much difficulty had an interview with Himmler, in which he protested against this procedure, and apparently Himmler gave him some encouragement to believe that it would be abandoned, and wrote him a Christmas letter which seemed to contain such assurance.

Early in January, Berger had to leave on a business trip and before leaving told Meurer to keep a sharp lookout and to let him know. Apparently, he had some apprehension at the time that the matter was being revived. While Berger was away, and on 19 January, this murder took place. It was accomplished by SS men in Wehrmacht uniforms, while transferring some French generals from one camp to another.

The opinion puts great stress upon the fact that some of the men in the group were subordinates of Berger in the agency, Chief

of Prisoner-of-War Affairs, but there isn't a suggestion in the evidence that they acted upon any order of Berger's. It must be remembered that while these men were subordinate to Berger, they were also subordinate to Keitel and to Himmler, as was Berger himself, and that they would naturally act in accordance with orders originating from that source regardless of whether they had Berger's permission or not.

An unfortunate error seems to have crept into the opinion. It quotes Berger as saying to Meurer, when Meurer reported to him on sending in the three names, that Berger approved of Meurer's action saying:

> "* * * because, after all, there are no possibilities left."

This statement, given as a direct quote from Berger, would indicate that Berger had given up the struggle and was determined to make no further resistance, but this also is not the record. The witness Meurer testified as follows:

> "I informed him of the changes that meanwhile occurred, and he approved my measures, because after all, there were no other possibilities left to me." (*Tr. 2375.*)

This conveys quite a different meaning, and does not suggest that Berger had given up the struggle. The facts appear to be, even as related by the prosecution witness Meurer, that Berger did nothing in the way of participating in this scheme to murder a French general; that, on the contrary, he did everything he could do to prevent the carrying out of such a scheme, even to the point of advising his office chief that he would have nothing to do with it.

The attitude of Berger to the execution of this order to have a French general shot is fully shown by the testimony to be one of opposition, and as effective opposition as it was possible for him to exert.

His attitude is further shown by the fact that almost immediately thereafter he heard that Hitler planned to hold as hostages certain prominent English prisoners of war who were connected with the Royal family, and Berger promptly had these prisoners of war moved to a point in Germany near the Swiss border, and from there, on his order, they were taken into Switzerland, and Berger declared at the time that it was being done to "prevent a second Mesny affair." He went to the extent of violating Hitler's order, to put prisoners of war beyond the reach of anyone who sought to carry out another murder like the Mesny affair.

Berger's conviction seems to rest upon the proposition that he was unable and unsuccessful in preventing Hitler, Keitel, and

Himmler from carrying out this enterprise. They were his superiors. Many lives have been lost by efforts to prevent these men from carrying out their will. The law imposes upon Berger no such obligation. He did expose himself to danger in his opposition, and he did nothing affirmative to aid the action. I am unable to see any legal basis for the conviction of Berger in connection with this unfortunate murder.

COUNT FIVE

Count five charges the defendants therein named with war crimes and crimes against humanity—

> "* * * in that they participated in atrocities and offenses, including murder, extermination, enslavement, deportation, imprisonment, killing of hostages, torture, persecutions on political, racial, and religious grounds, and other inhumane and criminal acts against German nationals and members of the civilian populations of countries and territories under the belligerent occupation of, or otherwise controlled by Germany, plunder of public and private property, wanton destruction of cities, towns, and villages, and devastation not justified by military necessity."

The opinion contains a lengthy discussion preliminary to the question of guilt of individual defendants. It seems necessary to refer to it only briefly.

In my judgment, it is incorrect to say that all of the German people, except a few, participated in the persecution of the Jews, and it is incorrect to say that the Foreign Office knew of exterminations of the Jewish people, especially if by the term, "Foreign Office," it is intended to imply that the Foreign Office defendants here had such knowledge. The evidence, in my opinion, falls far short of supporting any such a conclusion.

It is incorrect also, it seems to me, to assume that every reference to the "Final Solution" of the Jewish Question means extermination. The fact is that when the first campaigns against the Jews were inaugurated, the term, "Final Solution" came into use. Generally in the early stages, the final solution meant forced emigration. During one period it meant deporting the Jews to Madagascar. As a result of the Wannsee Conference, it meant deporting them to labor camps in the East. It never meant extermination, except to a few of the initiated.

The evidence shows that the program of extermination was handled with the greatest of secrecy. Hitler orally instructed and directed Himmler to start this action; Himmler carefully

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selected and pledged to secrecy the men who were to work with him and to carry out these exterminations; places were selected which were isolated, and were camouflaged by being identified with labor camps nearby, and the program was carried on with the deliberate purpose and design of preventing the German people, and all others not connected with the enterprise, from knowing what was going on. The evidence by those who were on the inside of this terrible extermination program strongly tends to show that not over 100 people in all were informed about the matter.

This is rather eloquently illustrated by the case of Fritzsche. Fritzsche was a responsible official in the Propaganda Ministry. He gathered news for the press and made news broadcasts over the radio; his whole activity was to discover the news and know what was going on, and yet the IMT found that he did not know about these exterminations.

He testified in that case that he had heard rumors; that he had asked Goebbels about the matter and that Goebbels informed him that it was just foreign propaganda. Under such circumstances, I do not believe it can be assumed, even though rumors may have been heard, that the defendants in the Foreign Office, or any other of the defendants, had knowledge of these exterminations at the time they were occurring, or at any time material here. The evidence certainly fails to show it beyond a reasonable doubt. Of course, they all know of them now and the world knows of them.

VON WEIZSAECKER and WOERMANN

The discussion in the opinion concerning von Weizsaecker and Woermann, in count five, which deals with the persecution of the Jews, is a long one. It reveals all of the details of those horrors. I fear it gives the impression that the Foreign Office was the principal agency for the execution of such policies. The method of presentation should not prevent a calm and logical analysis of the entire matter. The situation demands, for a just solution, reason and judgment, not emotion.

I have discussed some of the evidence with reference to the knowledge of the Foreign Office defendants of the extermination of Jews, to some extent in connection with another defendant. I will not repeat it here, but will expect what is said on that subject in connection with the Foreign Office defendants to apply to all.

Something additional, however, must be said here. The handling of the so-called Jewish question was vested by Hitler exclu-

sively in Himmler and his SS. The limited field in which von Weizsaecker and Woermann might exercise a veto on proposed Jewish measures will be discussed later. With reference to the question of knowledge on the part of von Weizsaecker and Woermann, the opinion cites the entire record of the Jewish persecutions. These persecutions increased in intensity as the years went by. Exterminations did not become a significant part of the program until about the middle of 1942 and most of the exterminations took place during the last 2 years of the war.

The opinion cites the Einsatzgruppen reports as charging von Weizsaecker and Woermann with knowledge of them. These reports are those of the SS units engaged in behind-the-line activities in Russia, and as a part of the war against Russia. But that war did not start until June 1941. Strange as it may seem, the incidents on which von Weizsaecker and Woermann are convicted are events which happened in June or July 1942, before they are shown to have had notice of those horrible things having happened, so that obviously, von Weizsaecker and Woermann could not be charged with having acted with knowledge of such events.

Moreover, it must be remembered that both von Weizsaecker and Woermann left Germany in 1943. Both were demoted by von Ribbentrop. Von Weizsaecker was sent to the Vatican, and Woermann to China, so at the time the worst persecutions took place, they were not even in the country.

The opinion cites the testimony of von Weizsaecker's son. It fails to show that von Weizsaecker had knowledge of any systematic exterminations at any time. It shows only that he knew of individual deaths, and that he could not understand them. But even more important than that, there is no time fixed in the son's testimony as to when his father heard of these deaths, whether at the beginning, in the middle, or at the end of the war. The testimony of the son quoted is worthless on that account.

There is nothing to impeach von Weizsaecker's testimony about what he knew. Certainly it is not impeached by the kind of facts referred to in the opinion. Moreover, it is indicated in the opinion that von Weizsaecker has some responsibility for what was done by Luther and Rademacher of the Foreign Office, whose activities are extensively quoted in the opinion.

Von Ribbentrop testified before the IMT that he set up a department in the Foreign Office to carry out Party programs. That was the Department "Germany" or "Deutschland." It was directly subordinate to von Ribbentrop, reported to him and received its instructions from him. Neither von Weizsaecker nor Woermann had anything to do with it.

With some of these irrelevancies out of the way, what was the picture? When the first action against Jews in Germany began, and Jews were required to register their property, the Foreign Office received many protests from foreign governments based on the grounds that Jewish nationals of those governments residing in Germany were required to register their property. Von Weizsaecker immediately conferred with the governmental department that was handling Jewish matters, and succeeded in having all Jews of foreign nationality relieved of this requirement, and an exception made in their favor. Later the general exception seems to have been lost, as pressure against the Jews increased, but the Foreign Office as represented by von Weizsaecker and Woermann continued to insist that it be consulted whenever any action against Jews of foreign nationality was contemplated. The object, of course, was to enable the Foreign Office to satisfy the reasonable demands of foreign governments, and to cultivate good relations with such foreign governments, and to prevent anything from happening which would produce bad international relations. This was a matter of foreign relations or foreign politics which was their particular responsibility and gave them a right to be heard, and that right was accorded them. Thus, when it was proposed to deport Jews from Holland, the Foreign Office was consulted. Von Weizsaecker objected that since Sweden was the Protective Power for Holland, it would not only have the right to object but the right to inspect the places where these people were housed, and that if it were discovered that they had been removed from Holland, the results would not be good so far as the relations with Sweden were concerned.

When it came to the proposal to deport Jews from France, von Weizsaecker objected vigorously to the deportation of Jews of American nationality on the ground that such treatment of American nationals would lead to bad international relations with America. He could not object on that ground to the deportation of other Jews of foreign nationality, because the governments of nations of which they were nationals, had agreed to their deportation. But this action of von Weizsaecker's was overruled by von Ribbentrop, and American Jews were deported.

When it came to deporting French and stateless Jews, a deportation for which von Weizsaecker and Woermann are convicted, the Foreign Office had no legitimate grounds to object. France agreed to the deportations; the Jews were stateless. No grounds, therefore, based on foreign politics existed for objection. Their consent meant no more than that. If von Weizsaecker's objection made on good grounds concerning American Jews was to be overruled, what possible grounds could be urged against the deporta-

tion of these French and stateless Jews, so far as foreign politics were concerned? So the so-called consent of von Weizsaecker and of Woermann was merely the recognition of a fact that conditions were absent which gave them a right to object on the grounds of foreign politics. But the opinion seems to hold, especially as to von Weizsaecker, that even in such a situation, he should have taken advantage of the opportunity to deliver a lecture to von Ribbentrop on international law and on morality.

Such a sentiment fails, it seems to me, to appreciate the realities of the situation prevailing in the Reich and the personality of von Ribbentrop. He was in the habit of doing the lecturing. For an underling who, he had recently overruled to attempt to lecture him certainly would have done no good, and it might have done a lot of harm. If von Weizsaecker could not prevent von Ribbentrop from deporting Jews of American nationality on the ground that it might disturb international relations, how could he expect to interest him in nondeportation of Jews on grounds of general morality? But I do not see how either of these men can be convicted for such an oversight in any event, and failure to preach morality is not a crime—at least not one charged in the indictment or provided for in Control Council Law No. 10.

I am unable to grasp the significance of the other incident cited against von Weizsaecker concerning employees of diplomatic corps. I understand that the term "Diplomatic Corps" includes all people employed by the government, which maintains the mission and for the purpose of carrying out the functions of the mission. The dispute has reference to people personally employed by such members, as for instance, household help in their homes.

If my interpretation is correct, it seems to me that von Weizsaecker's opinion was correct. But whether it was or not, there is nothing to indicate that it was not given in good faith, and honestly. A mistake in the interpretation or application of the law, fortunately, is not a crime.

I see no justification for holding von Weizsaecker or Woermann guilty of persecution of the Jews in connection with the matters recited in the opinion. The deportation of these Jews was in the hands of the SS or the occupying forces in France. The Foreign Office, as represented by von Weizsaecker and Woermann, had a limited right of objection as to Jews of foreign nationality. They seem to have exercised that right wherever it was available. Where it was not available, they had no grounds for objection. That is the extent of their consent. To convict them, is to punish them for the acts of another department of government, which they did not order, and which they were powerless to prevent.

Steengracht von Moyland is charged in paragraph 42 of the indictment:

"42. * * * innocent members of the civilian population of the occupied countries not connected with any acts against the occupying power were taken as hostages and, without benefit of investigation or trial, were summarily deported, hanged, or shot. These innocent victims were executed or deported at arbitrarily established ratios for attacks by person or persons unknown on German installations and German personnel in the occupied territories. In many cases the recommendation and approval of the German Foreign Office, with the participation of * * * Steengracht von Moyland * * * [and others] were required prior to the execution of these measures and the necessary diplomatic 'cover-up' was effected to conceal the nature of these crimes.

* * * * * * *

"48. * * * Since by far the greater part of the victims of this genocidal program were nationals of puppet and satellite countries dominated by the Third Reich, the German Foreign Office, through the defendants * * * Steengracht von Moyland * * * [and others] forced these governments to deport persons of Jewish extraction within their countries to German extermination camps in the East, and directed and controlled the execution of these measures. * * *"

It will be observed that in the first paragraph [above] Steengracht von Moyland is charged with *approving* deportations, and in the second with *forcing* deportations.

A reading of the opinion reveals that Steengracht von Moyland is not convicted on either of these grounds, and that the reason for his conviction is remote from any statement contained in the bill of particulars against him.

As previously pointed out, it is my view that indictments should mean something and that no defendant should be convicted except upon a charge contained in the bill of particulars.

But that aside, the things on which Steengracht von Moyland is convicted do not, in my opinion, constitute a crime against humanity at all. For that reason it seems to me unnecessary to go into the question of whether all of the findings of fact contained in the opinion are justified.

Assuming that they are justified by the evidence, no crime against humanity appears.

What appears in the facts, as found by the Tribunal, is the following:

1. That on von Ribbentrop's order, Steengracht von Moyland organized an office for anti-Jewish action abroad;

2. That a card index of Jews abroad was prepared and presented to him;

3. That a memorandum was presented to him recommending violent action against the Jews in Budapest; that he referred this to the Minister at Budapest, who disapproved it, and nothing came of the matter. The subsequent action against Jews in Budapest had no connection with Steengracht von Moyland, and is not claimed to have had;

4. He advised the Swedish envoy that he was not competent to deal with Danish questions. He was legally correct. The opinion suggests he should have shown sympathy.

5. Several reports and memorandums were prepared in the Foreign Office, one with reference to the deportation of Jews in Greece, particularly in the Salonika area, but this appears to have exempted Jews of foreign nationality, whose governments had not consented to the deportation, and this was the only competency that Steengracht von Moyland, or the Foreign Office, had in the Jewish question.

6. There was extensive correspondence had, and memorandums and reports made, in an effort to permit some Jewish children to emigrate. The original request was to permit them to emigrate to Palestine. This could not be done under the German policy prevailing at the time. The German Government was courting the Arabs; the Mufti of Jerusalem was in Germany. Germany hoped to make contact with the Arab world and to conclude an alliance with it, and did not want to risk displeasing the Arabs by sending Jews to Palestine. This was a high-level decision which Steengracht von Moyland did not make and could not violate. There were some negotiations with a view of having them taken to England and various reports and memorandums were prepared on the subject until von Ribbentrop stopped the whole business.

7. Steengracht von Moyland wired the Legation at Bucharest to make an effort to have the Rumanian Government cancel its permit for the Jews to emigrate to Palestine, in order to bring its policy in accordance with the German policy.

It is transactions of this type that are the basis of the conviction of Steengracht von Moyland, and particularly negotiations concerning permissions to emigrate. The opinion, after describing these documents, states in the two final paragraphs, the conclusions with reference to them as follows:

"It would be difficult to conceive of a more flagrant bad faith than that which was carried out in these negotiations. Here at least is one occasion where Ribbentrop, as Foreign Minister, asked for advice of his Foreign Office. Here was the opportunity for the Foreign Office and its State Secretary to give good advice instead of bad; to point out how the improvement in German foreign relations and its rehabilitation in the eyes of the world would be possible by at least permitting children to be saved from extermination; but every step which the Foreign Office took, every recommendation that it made, was directed to block efforts made by leading countries of the world, neutral as well as enemy states, to permit little children to come unto them and to defeat the efforts of the good Samaritans, and turn their offers into Nazi propaganda."

"Steengracht was a party to this; he must bear the responsibility. He should be and is held guilty under count five."

This shows pretty clearly that Steengracht von Moyland's guilt consists in his failure to read a moral lecture to von Ribbentrop. It is unnecessary to speculate as to whether or not he should have done so, and what the effect would have been if he had. It is only necessary to point out that his failure to do so is not a crime against humanity charged in the indictment and defined in Control Council Law No. 10.

The opinion in this [case], and in the case of other defendants in this count, seems to me to ignore the definition of crimes against humanity as contained in the law, and to proceed upon the theory that anything which a defendant may have done, which fails to meet the personal approval of the writer of the opinion, as to what constitutes proper conduct, is a crime against humanity.

This impression is fortified by statements in the opinion as follows:

"The defendants here are charged with violation of international law.

"International law is not statutory."

In my view, we are not enforcing any vague uncodified law, which we are free to mold to suit our own tastes. There is no such thing as a crime against humanity within our jurisdiction, except a violation of the provisions of Control Council Law No. 10 [Article II, paragraph 1(*c*)] which defines the crime as follows:

"*Crimes against Humanity.* Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane

acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated."

It has been held by these Tribunals, and uniformly followed, that under the principle of *ejusdem generis* the word "persecutions," as used in this statute, refers to the same kind of acts and offenses enumerated in the same sentence, that is, murder, extermination, enslavement, etc. A persecution, therefore, must involve some act of violence against the person of the persecutee. The expression of anti-Semitic ideas, or sentiments, no matter how unreasonable and unjustifiable it may be, is not in that class.

The opinion fails to show any act on the part of Steengracht von Moyland which was intended to produce, and which did in fact produce, any mistreatment of Jewish people which can properly be described as a "crime against humanity."

KEPPLER

The defendant Keppler is convicted because he helped organize, and was a member of, the Aufsichtsrat of the corporation known as DUT.

When the government was transferring ethnic Germans into the Reich to become citizens of Germany, the defendant Keppler recognized the hardships to which these people were exposed and took the lead in organizing a corporation under the private incorporation laws to serve their interests. It is DUT. It was generously supplied with government capital and, in addition, borrowed large sums of money which it used in helping these people transfer to their new location and to become rehabilitated there. Frequently they were not permitted to take along with them their household furniture and farm machinery and livestock and things of that kind. The corporation helped with the liquidation of such property in cases of that kind, under a power of attorney given by the person. In the case of removals from the South Tyrol, they were not permitted to move out any of their property. The DUT helped to list and appraise the property, and present and collect a claim for it from the Italian Government.

When the settler arrived in Germany, it made advances to him in the way of loans until he could become self-supporting and made loans to him to enable him to become established in whatever trade or business he was accustomed to. If he was a farmer they helped him get a farm and to buy the necessary machinery and equipment to reestablish himself. The same policy was pursued if he followed some trade or business.

The nature of its business functions is well described in one of its reports (*NID–7721, Pros. Ex. 2829*) which the prosecution put in evidence as follows:

> "The tasks and duties of our company on the one hand comprise the care of all matters connected with the settling of property questions and the transfer of property belonging to resettlers and left behind in their country of origin. On the other hand, it takes care of all economic aspects in connection with the reemployment of the resettlers in the new settlement areas of the Reich. It was essential that a suitable organization be created with the utmost dispatch, which would make it possible to provide for the resettlers not only advice and care with regard to economic problems, but also—in the interim period until their reemployment—to obtain loans against cash property left behind, assistance payments, transfer money when a home is assigned and, finally, the financial means for making a new start."

Considering the nature of this corporation and the service it rendered, what, may we ask, was Keppler's crime in helping to organize it and serving on its governing board? The opinion does not say much about DUT. It speaks rather of what others did, and of other programs. Keppler is responsible only for what he himself did and, conceding that others may have been guilty of a crime against humanity in forcing a person to enter the Reich, there is no reason why such person must be allowed to starve to death. Those who offer him food and help, and minister to his wants, are not made criminals simply because he may be a victim of somebody else's wrongs.

DUT was a separate corporation, set up to render a service, including a financial service, to these people. Its service was an aid to humanity, not a crime against humanity.

These comments apply equally to the defendant Kehrl in this count.

VEESENMAYER

The opinion with reference to Veesenmayer seems to me to present a greatly exaggerated, and in some instances an incorrect, description of his activities and the results thereof. He had been an instructor in political science and economics at Munich University. He became attached to Keppler when Keppler was Economics Adviser to the Party. With Keppler he went to Berlin, where he continued to serve on a part-time basis, dividing his time between the University of Berlin and his work with Keppler.

When Keppler went to the Foreign Office, Veesenmayer went with him. He continued to work with Keppler on economic questions, and he was used by von Ribbentrop for special assignments in the political field.

The opinion discusses his activities in reverse order. He was sent to Serbia in 1941 while it was belligerently occupied by Germany and at a time when partisan warfare and the shooting of hostages, which was taking place there, marked it as one of the bloodiest chapters of the war. Jews were being shot as hostages at a terrific rate. Veesenmayer's task was to try to work out some political arrangement which would result in the pacification of the country.

When he discovered the situation—and he was then carrying the title of "Reich Plenipotentiary"—he joined with the Minister Benzler in a message to the political division of the Foreign Office recommending that an arrangement be worked out for the removal of the Jews from Serbia by sending them down the Danube River to Rumania.

Later the same day, both these parties joined in a second message, emphasizing that a quick and laconic solution was necessary as a matter of practical necessity. This message, of course, referred to the recommendation for the removal of the Jews by sending them down the river in barges. The attempts in the opinion to make it appear that the reference is to extermination of Jews is wholly unwarranted. This is all Veesenmayer did in Serbia.

Benzler, the Minister, had labored to the same end before Veesenmayer arrived and continued the same effort after Veesenmayer's departure, but to no avail. The partisan warfare and the shooting of hostages continued until in the process the Jews were so reduced in number as to cease to be a factor. While the opinion heaps scorn on Veesenmayer on account of this matter, it had to recognize that these unfortunate Jews in Serbia lost their lives not because the recommendations of Veesenmayer and Benzler were followed, but because their recommendations were not followed. If their recommendations had been carried out, at least thousands of these unfortunate people could have been saved. The part which he and Benzler played in Serbia merits no condemnation under the circumstances which existed there. The cause of humanity would have been served if their recommendations could have been carried out.

HUNGARY

Veesenmayer is convicted because of his activities in Hungary. In 1943, Hungary, which was an ally of Germany in the war, was

showing a lack of enthusiasm for the struggle. Its troops were displaying a lack of fighting spirit. There were elements in the population of Hungary which wanted to abandon the alliance with Germany and to make peace with Russia. This feeling grew as the Russian armies advanced toward the Hungarian border.

Von Ribbentrop sent Veesenmayer to investigate the political situation and report. He made a detailed study of the situation in Hungary. In his report he discussed many of the political leaders and their attitude. He listed the elements in the population which were hostile to Germany, and inclined to adhere to her enemies, and whose influence was operating to pull Hungary away from her alliance with Germany. He listed first among those elements the Jews, and third, the clerical circles. No one in this case has questioned the fact that his report is objective, unprejudiced, and factually correct. He explains why the Jewish population was opposed to Germany. He states that it is because of the manner in which Jews have been treated in Germany. This might even be considered a criticism of the German policy, but nobody questions that it is a correct judgment.

It should be remembered that Veesenmayer's work had not been in connection with Jewish questions; that was the exclusive prerogative of Himmler and the SS. He had shown no particular anti-Semitic sentiments. His work had been exclusively in the field of economics and politics. He recognized, as a fact, that the Jewish elements in Hungary, with their friends and the influence they were able to exert, represented a balance of power in Hungary which was pulling Hungary away from her alliance with Germany.

The correctness of his judgment on that proposition is not challenged.

He also reported that there were elements in the government, including the Prime Minister, which were opposed to Germany. His only recommendation was that there should be a shake-up in the government. This report he sent to von Ribbentrop. Whether anyone else ever saw it or not is not discussed by the evidence. The opinion condemns Veesenmayer for this report, which, in my judgment is without reason.

Later he made what has been called a second report, which only suggests means which might be effective for accomplishing a change in the government, but the matter seems to have taken a different course than the one he recommended. The situation in Hungary continued to worsen from the German standpoint. Other reports were received from Hungary, especially from the SS

which had some of its units there. The army also had a small detachment there.

In March 1944, Hitler and Horthy, who was the Regent of Hungary, had a meeting as a result of which Horthy agreed to form a new government which would cooperate more closely with Germany. Such a government was formed and Veesenmayer was sent to Hungary as German Plenipotentiary and Minister. He carried the title of Plenipotentiary in other countries previously, and carried that title in Serbia, as previously noted.

He was to be the highest political officer of the Reich in Hungary, and take his instructions from von Ribbentrop. His powers are outlined insofar as Germany is concerned by the instrument of his appointment. The description of his powers, as contained in the opinion, are greatly exaggerated. For instance the opinion states:

> "The army was under obligation to support Veesenmayer in his political and administrative duties."

This suggests that he was exercising power in Hungary by virtue of the force of the German Army. There is nothing of that sort in the instrument of appointment, and in order to make it clear what functions Germany expected him to perform, I set out the instrument of appointment in full as follows (*NG–2947, Pros. Ex. 1806*):

> "(1) The interests of the Reich in Hungary will henceforward be protected by a Plenipotentiary of the Greater German Reich in Hungary, who will simultaneously bear the designation Minister.
>
> "(2) The Reich Plenipotentiary is responsible for all political developments in Hungary and receives his directives through the Reich Minister for Foreign Affairs. He has the special task of paving the way for the formation of a new national government which will be resolved to fulfill loyally and until final victory is achieved the obligations imposed upon it by the Tripartite Pact. The Reich Plenipotentiary will advise this government on all important matters and represent always the interests of the Reich.
>
> "(3) The Reich Plenipotentiary is to ensure that the entire administration of the country, as long as German troops are there, is carried out by the new national government under his guidance in all fields, and with the object of utilizing to the fullest all the resources the country has to offer, in particular the economic possibilities, for the joint conduct of the war.
>
> "(4) German civilian offices, no matter of what nature which are to operate in Hungary, may be established only with the

consent of the Reich Plenipotentiary; they will be subordinate to him and will act in accordance with his directives.

"To perform tasks of the *SS* and Police concerning in Hungary, and *especially police duties in connection with the Jewish problem,* a Higher SS and Police Leader will be appointed to the staff of the Reich Plenipotentiary and will act in accordance with his political directives. [Emphasis supplied.]

"(5) As long as German troops remain in Hungary, military sovereignty will be exercised by the Commanding Officer of these troops. The Commanding Officer is subordinated to the High Command of the Wehrmacht and receives his directives from him.

"The Commanding Officer of troops is responsible for the internal military security of the country and for its defense against threats from abroad.

"He supports the Reich Plenipotentiary in his political and administrative duties and acquaints him with all Wehrmacht requirements, especially with regard to the utilization of the country for the provisioning of the German troops.

"The requirements of the Wehrmacht, insofar as they concern the realm of civilian affairs, are met by the Reich Plenipotentiary.

"In cases of imminent danger the Commanding officer of German troops has the right to order also in the realm of civilian affairs, measures necessary for the fulfillment of military tasks. He will arrive at an agreement with the Reich Plenipotentiary concerning this as soon as ever possible.

"The Reich Plenipotentiary and the Commanding officer of German troops must cooperate as closely as possible wherever their spheres of activity overlap and agree on all measures.

"(6) I name Party Member Dr. Edmund Veesenmayer Plenipotentiary of the Greater German Reich and Minister in Hungary.

Fuehrer HQ. 19 March 1944
Signed: ADOLF HITLER"

Moreover, such army detachments as were in Hungary when he was appointed, left very soon thereafter.

The opinion lays stress upon the fact that this instrument provides that no German civil offices were to be opened in Hungary without Veesenmayer's consent. I see nothing remarkable in such a position. His job in Hungary was primarily to keep Hungary in the war on Germany's side. He represented the German political line or policy in Hungary under directives furnished him by von Ribbentrop. This operation might be

greatly hampered if other German civil offices were established which pursued a different and an inconsistent policy.

It should be remembered that Himmler and his SS organization maintained a foreign intelligence service, and were frequently in disagreement with the Foreign Office in the field of foreign policy. It was established in this case that the SS representatives in Hungary were not in sympathy with the policy pursued by the Foreign Office in Hungary. They were impatient at the restraint imposed by the method of working with the Hungarian Government. They wanted to take over Jewish matters themselves. They favored a more aggressive policy. They were suspicious of Veesenmayer. In view of this background, it is easy to see why von Ribbentrop would insist on his representative being the ranking German *political* leader in Hungary. It gave him control over the policy to be pursued there by Germany.

After the new government set up following the Hitler-Horthy Conference, and Veesenmayer became established in Hungary, he reported to his government what the Hungarian Government was doing, and promising to do, in the way of deporting Jews to work camps in Germany. These reports are numerous and cover a period from the latter part of March until a little after the middle of June 1944. These reports seem to be the basis of his conviction. But Veesenmayer did not deport anybody. The deportations were carried out by the Hungarian Government.

Not a single witness or document introduced in the case indicates that Veesenmayer was doing the deporting. The opinion quotes testimony of the head of the Jewish organization in Hungary, a prosecution witness who certainly could not be charged with being prejudiced in favor of the defendant. Such question we may assume to be the strongest evidence in the case supporting the Tribunal's conclusion, and yet, if it is analyzed, it will be found that in place of supporting the Tribunal's conclusion, it is in opposition to it. For continuity I reproduce that quotation here (*Tr. p. 3647*):

"Q. Do you mean by that, Witness, that the defendant Veesenmayer was not concerned with the execution of the Jewish deportations which (I will leave open for the moment) was carried out by Jarosz, von Baky, Endre, Eichmann, or Winkelmann?

"A. My dear colleague, I do not suppose that you will imagine that a man as intelligent as Veesenmayer would formally carry out his mandate as Plenipotentiary and Minister of the German Reich in such a way as to transgress his limits by interfering with the executive. He could not and should not

have done it under any circumstances and he did not need to. As I said this morning, by appointing a suitable government in Hungary, and laying down the general political directives for it, further activity and closer activity concerned with greater details of the executive was no longer necessary. He was, if I may say so, the spiritual author, but he was certainly not the executor."

It will be noticed that the witness states first that Veesenmayer did not and should not transgress his limits as Plenipotentiary and Minister of the German Reich by interfering with the executive, and that he was not the executor of the Jewish policy. This is inconsistent with the claim made in the opinion to the effect that Veesenmayer ordered these deportations and was the *de facto* government of Hungary. The witness states second, that the deportations were accomplished by appointing a suitable government in Hungary and laying down the political directives for it. The witness is of the opinion that this was the manner in which Germany influenced deportations, and that it was the work of Veesenmayer, and therefore, that he was the spiritual author.

But it appears without any dispute in this record that Veesenmayer did not appoint the new government, and that Veesenmayer did not lay down the political directives for it.

The new government was appointed by Horthy. True, it was influenced by Germany. That influence was by Hitler and is manifest by the agreement between Hitler and Horthy. To the extent that Germany agreed to the appointment of certain individuals to be in the new government, that agreement was expressed by von Ribbentrop. It is undisputed, and the instrument of appointment clearly provides that the political directives are to be issued by von Ribbentrop.

Veesenmayer merely passed on these political directives from von Ribbentrop to the Hungarian Government, so according to the witness' own tests, Veesenmayer cannot be the spiritual author of these deportations because he neither appointed the new government, nor issued political directives to it.

After these deportations had continued for a few months they were suddenly stopped. They were stopped by Horthy, and so completely and effectively were they stopped that trains which had already started for Germany carrying Jewish deportees, were stopped en route, and returned to the point from which they started, and the people unloaded. This should end all argument as to where the power of government in Hungary lay during this period. Horthy himself testified that after he stopped them, Veesenmayer requested, on behalf of his government, that they be resumed, and that he refused.

Horthy claims that he took this action after having heard a report that these Jews were being mistreated in Germany, and that he heard this report from people who obtained it by monitoring a message of a foreign government sent from Switzerland.

It is wholly unrealistic to charge Veesenmayer with responsibility for these deportations, or to assume that he had any power in Hungary to effect deportations. Whatever was done in Hungary during this period was done by the Hungarian Government and in accordance with its agreement with Hitler. It may be true that the Hungarian Government was influenced by Germany, but if so, it was Germany as represented by Hitler, at his meeting with Horthy, and by von Ribbentrop—men who controlled the Government of Germany—and not by Veesenmayer, a young man who for the first time in his life was serving in a ministerial capacity.

It is a little surprising to find such praise for Horthy in the opinion. It apparently overlooks that he was an enthusiastic ally of Hitler, and pursued the same program until the Russian troops came so close to the Hungarian border that he decided that it was the better part of discretion to take another line.

The opinion also seems to overlook that Horthy, together with Mussolini, enjoyed the distinction of having each been kidnapped by German forces, as a means of rescue from the wrath of their own people, and brought to safety in Germany. These rewards were compensation for cooperation, and that fact should not be overlooked.

These deportations were the result of the Hitler-Horthy conference, and were to be carried out by a new government to be set up by Horthy, yet Veesenmayer was appointed as the diplomatic representative of Germany, and charged with the responsibility of reporting what the Hungarian Government was doing to carry out that agreement, and of delivering to it the political directives which von Ribbentrop transmitted to him, and that this course involved urging the Hungarian Government to remain faithful to its agreement with Germany, and, therefore, it might, as a matter of first impression, appear that Veesenmayer aided and abetted these deportations.

The difficulty with this line of reasoning is that Veesenmayer, as an individual, had of course, no influence with the Hungarian Government. No act of his could have any effect on the policy pursued by the Hungarian Government. If the messages he delivered to the Hungarian Government had effect, it was because they were messages from the German Government, demands, requests, and suggestions of various sorts. As to them, Veesenmayer was little more than a postman delivering messages.

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For example, the opinion lays great stress upon the fact that Veesenmayer was instructed to deliver to the Hungarian Government an ultimatum, and that he did deliver the ultimatum as instructed. Can anybody claim that such delivery constituted a crime? It was not his ultimatum; it did not purport to be. It was not understood to be. In delivering it he acted merely as a messenger, and so it is with the various communications which the German Government sent through Veesenmayer to the Hungarian Government.

As to the diplomatic representative of Germany, he was the proper person to deliver all such messages. I am unable to see that in so doing he had any criminal intention or that the delivery of them constituted any crime.

Elsewhere in this separate opinion I have discussed the responsibility of the man who formulates decrees or even signs orders at the direction of somebody else, as in the case of the Chief of Staff, and have reached the conclusion that no crime is involved. Much less is it a crime to act as a messenger.

The person who is responsible for the issuance of an order that requires the commission of a crime, and the person who executes such an order, is liable, but the messenger who carries it, or the postman who delivers it, or the diplomatic representative who delivers it, commits no crime so far as I am able to see.

The opinion closes with the remarkable statement that, "We believe Veesenmayer knew that these Jews were being exterminated and so find."

It is significant that the opinion does not say that the evidence shows such facts beyond a reasonable doubt. There is no evidence that any of these Jews which Veesenmayer reported did not go to work camps in Germany as he reported, and as had obviously been reported to him, nor is there any evidence that they were thereafter exterminated. There is no evidence that I can find that Veesenmayer even heard a rumor of exterminations until Horthy claimed to have had it reported to him from some message of a foreign government which had been monitored. But the deportations stopped then. There is no evidence that Veesenmayer was in any way connected with any further deportations. He did urge them on Horthy, in accordance with a directive of his government, but Horthy refused.

Veesenmayer was a diplomatic representative whose duties were to report from Hungary and to make representations to the Hungarian Government in accordance with directives issued to him by the Reich. The attempt to make him responsible for the crimes of Hitler and Horthy, and their governments, and the SS over

whom he exercised no command authority, cannot be sustained by the facts or the law.

The charge of the indictment that Veesenmayer *forced* the Hungarian Government to deport its Jews, is not established by the evidence beyond a reasonable doubt. If the Hungarian Government was forced at all, it was by Hitler, and in his conference with Horthy and by threats emanating from him, and which had effect because they came from him and not because they may have been delivered by Veesenmayer.

Incidentally, Veesenmayer is convicted under count seven, the slave labor count, of a war crime in that he participated in the deportation of these same people, involved in this count, to Germany for slave labor. Obviously, this could not legally stand even if he had a part in such deportations, for the reason that the deportations were not from belligerently occupied territory but from the territory of an ally.

In addition to that, he is also convicted under count eight, on account of this same matter, although in the opinion it is recognized that what he did in Hungary was not as a member of an SS unit, but as a Foreign Office representative.

DIETRICH

The defendant Dietrich is charged in the paragraph of the bill of particulars in the indictment with the following:

> "46. A program for the extermination of all surviving European Jews was set up by the defendants in the winter of 1941–42 and organized and systematically carried out during the following period. Through the efforts of the defendants, * * * Dietrich [and others] the rationale and justification for, and the impetus to, mass slaughter were presented to the German people. * * *
>
> * * * * * * *
>
> "48. * * * The defendants Lammers and Stuckart were principally connected with the formulation of the genocidal policy, and the defendant Dietrich conditioned public opinion to accept this program, by concealing the real nature of the mass deportations. * * *"

A reading of the opinion does not lead to the conclusion that the Tribunal regards either of these specifications as having been established by the evidence. As to the first, no evidence is cited to establish that the defendant organized and systematically carried out a program for the "extermination of all surviving European Jews during the winter of 1941–42." There is nothing in the evidence to indicate that the defendant Dietrich had anything

to do with the formulating of such a program or had anything to do with carrying out of such a program, or had any knowledge of the existence of such a program.

As to the charge in the second paragraph that he concealed information for the purpose of deception of the people as to the real nature of the deportations, the opinion expressly exonerates him from that.

Why then was he convicted?

In brief, the opinion holds that he is responsible for anti-Jewish propaganda material issued to the press as daily directives; and that—

> "* * * the only reason for this campaign was to blunt the sensibilities of the people regarding the campaign of persecution and murder which was being carried out."

Not a single fact or circumstance is cited in the opinion to justify this sweeping conclusion.

The opinion seems to presuppose a grand conspiracy in which all the people in the government were members, and that its object was to exterminate all Jews and that every anti-Semitic act of any defendant was directed toward that end. It seems to make no difference that such a conspiracy is not allowable under the law, is not plead in the indictment, and is not established by the evidence, and that no attempt was made to establish it.

There is not a particle of evidence that Dietrich knew anything about exterminations, and if he did not know, how could that have been his reason, assuming he was responsible for the daily directives?

Moreover, the conclusion assumes that people generally knew of these exterminations and therefore had to have their sensibilities blunted. This is an even wilder assumption.

It should be borne in mind that the IMT held that anti-Semitism was not a crime, and that Fritzsche who put out this same kind of propaganda over the radio was acquitted by that Tribunal.

But, aside from that, the evidence fails to show that Dietrich was even responsible for these daily paroles which are relied upon.

Dietrich was a sort of press secretary for Hitler during his rise to power. As Press Chief he controlled the Party press, but that is not material here. What is involved here is the daily parole.

The origin of the material which went into these daily paroles is rather clearly established. Goebbels was the Minister of Propaganda; he had a state secretary in his department for press, for radio, and for some other divisions of his ministry. Dietrich was the State Secretary for the Press.

Minister Goebbels held a conference every morning at which the propaganda line was announced orally by Goebbels. Other ministries were also represented, such as the Foreign Office and the OKW, and they suggested propaganda ideas. These were written up from notes taken by men from Dietrich's office in the Ministry. They were then submitted to Dietrich usually by telephone since he personally was always at Hitler's headquarters, and was a press representative for Hitler. Hitler was no amateur propagandist himself. He had ideas. These were communicated to Dietrich, whose suggestions were then given priority over those of Goebbels, not because Dietrich was superior to the Minister Goebbels, but because his voice was the voice of Hitler. He was regarded, and so far as appears, rightly, as expressing the wishes of Hitler. There is no evidence that Dietrich personally and on his own motion, ever originated a parole. The contents of these paroles cannot, therefore, be charged to him. It is claimed that he had the right to veto them and that they were all read to him for his approval before dispatch. It is true that he could and did exercise that right, but only because being at Hitler's headquarters, he was reflecting Hitler's ideas. He could not and so far as the proof goes, did not overrule his Minister on his own notion and responsibility.

As to the weekly or periodical service, Dietrich is not shown to have had anything to do with those. The evidence is undisputed that the weekly service, extracts from which are introduced in evidence, was carried on as a private enterprise and sold to periodicals, and were not submitted to or approved by Dietrich.

There was a service available to periodicals and for which of course no charge was made. But it was made up of collections of daily paroles.

Dietrich is not shown to be responsible for the particular daily directives on which the opinion relies and which were issued over a period of over 4 years. The daily paroles were, of course, secret, and had no effect so far as the public was concerned, except as they were reflected in the press. How they were reflected in the press does not appear. It is obvious, however, that expression of a mild brand of anti-Semitism would meet their demands. Many things, it will be noticed, are in the daily paroles, which do not require publication. Indeed many things are in them which, according to their terms, are not to be published.

It should be borne in mind that anti-Semitism was a part of the NSDAP program from the beginning, even before it came to power; that it characterized the propaganda line of the Ministry of Propaganda from its establishment; and that those facts do

not square very well with the Tribunal's unsupported conclusion as to the reason for them.

These daily paroles lay down an anti-Semitic propaganda line which is far from being admirable, but they do not prove a crime against humanity.

SCHWERIN VON KROSIGK

The opinion which convicts Schwerin von Krosigk of crimes against humanity in count five shows on its face that he is not guilty. He is charged with participation in the levying of fines against Jews and the confiscations of Jewish property.

First of all, it should be noted that he participated in these matters only to the extent of approving the provisions of decrees which were applicable to his office. Jewish matters were not his responsibility. He was, however, Finance Minister. It was universally recognized under German law that where he cosigned a decree which originated elsewhere, such cosignature meant only approval so far as the provisions applicable to his office were concerned. Under German law he was responsible only to that extent. The opinion rejected this admitted legal proposition. I do not see how it can be separated from the intent with which he acted. And unless criminal intent is regarded as having become obsolete in this case, it should be considered.

Moreover, many of the acts such as the Jewish fines took place before the war began and are not within our jurisdiction.

But disregarding all such considerations, the most that can be claimed is that he participated in depriving Jews of property. This cannot be a war crime because the victims were German nationals. It cannot be a crime against humanity because, merely depriving people of their property is not such a crime. There must be some mistreatment of the person as previously pointed out. Schwerin von Krosigk is not shown to have participated in any such mistreatment of the person of Jews or anybody else.

PUHL

The conviction of Puhl seems to me to be wholly unwarranted. The Reich Bank was organized on the Fuehrer principle. The president, who was Minister Funk, was the sole authority in the operation of the bank. There was no division of authority in the bank. Funk was supreme. He made the arrangements with Himmler to receive these articles. What Puhl did was to communicate that information to the appropriate receiving teller of the bank, at Funk's direction. There was no crime in that. He

had no knowledge then that these articles were obtained as the result of a crime. He supposed they were legitimate booty obtained by the Waffen SS in the campaign in Poland.

This is confirmed by his statement to the receiving teller 2 weeks later that the receipts must be about over. Moreover, the opinion recognized he acted innocently at the time. But the articles continued to come in and the nature and volume of the articles were such as to raise some question about their propriety. The evidence fails to show that Puhl knew this. He had no responsibility for the matter and no reason to keep in touch with it. But assume he did know about it. There was nothing he could do. He had no more authority to cancel an arrangement made by the president, than the office boy had.

The opinion seems to lay stress on the fact that he was a vice president, and the ranking officer in the bank when the president was absent, and that the president was frequently absent. This does not change the situation. It certainly does not authorize him to cancel an arrangement made by the president, as soon as the president left the bank. Moreover, it did not authorize him to assume the responsibilities of the president. In Funk's absence, Puhl merely communicated to the departments of the bank other than his own, what President Funk desired to be done. In other words, in Funk's absence, Puhl communicated to the operating men in the bank Funk's directions. Funk was running the bank whether present or not.

But the important thing is that Puhl had no authority whatever to overrule Funk. That certainly was no part of his responsibilities. He committed no crime either by act of omission or commission.

CONCLUSION

The foregoing examination of convictions under this count has been only for the purpose of illustrating methods of interpreting facts and law and determining guilt with which I am unable to agree. No useful purpose would be served by examining other convictions. The same or similar defects exist, however, in my judgment as to all of the findings of guilt in this count. This does not mean that in my opinion no findings of guilt are justified. It does mean that where a finding of guilt is justified, the opinion so exaggerates the guilt, that I cannot concur in it.

COUNT SIX

Count six is designated as, "War Crimes and Crimes Against Humanity: Plunder and Spoliation." It charges the defendants therein named with such crimes—

"* * * in that they participated in the plunder of public and private property, exploitation, spoliation, and other offenses against property and the civilian economies of countries and territories which came under the belligerent occupation of Germany in the course of its invasions and aggressive wars."

My inability to adhere to the decisions reached under this count arises chiefly from a difference of view as to what constitutes spoliation and what proof is necessary to establish it. Unfortunately, the opinion does not attempt to define the crime or lay down any standards or tests with reference to it. The Hague Rules are quoted, but many of the convictions do not appear to have much connection with or relation to those rules.

Here, as elsewhere, a better understanding of the legal concept on which the convictions rest, may perhaps be had by reference to the argument made on behalf of the prosecution. It is argued in this case that any benefit to the German economy arising from the occupation, or in any way connected with it, is unlawful.

It is contended that Germany was required, under the law, to maintain herself and carry on the war with her own resources, and that if she used any of the resources of occupied countries to maintain herself or to carry on the war, a war crime was committed, regardless of the manner of acquisition. It was further contended that if German citizens bought into business enterprises in the occupied territories, and thereby obtained some control over such enterprises, and the general economy of the occupied territories, that that too was a war crime.

Agreement with this view, at least to some extent, appears to be reflected in the opinion.

Prior to the adoption of the Hague Rules of Land Warfare, a belligerent could do whatever he wished in occupied territories. The Hague Rules placed limitations on what could be done. Those rules contain certain prohibitions, a violation of which constitutes a war crime. Unless it appears that a defendant charged here violated some of these rules, there can be no proper legal basis for his conviction.

These rules provide, in Articles 46 and 47 that:*

"Pillage is formally forbidden,"

and that:

"* * * private property * * * must be respected."

Pillage is generally interpreted to meant simply stealing. The indictment, in place of using that term, uses the term in the

* Annex to Convention No. IV, 18 October 1907, War Department Technical Manual 27-251, Treaties Governing Land Warfare (United States Government Printing Office, 1944), Articles 46-47, page 31.

heading, "Plunder and Spoliation," and then in the first [sixth] count of the indictment, it expands to:

> "* * * exploitation, spoliation and other offenses against property and the civilian economies of the countries * * *."

In the argument it expands to include almost any form of contact with the economy of the occupied territory. So far as I am concerned, it seems to me that it still has to be "pillage" or some reasonable equivalent thereof, if it is to constitute a violation of Articles 46 or 47.

The opinion refers to the IMT judgment to support the proposition that there was extensive plunder and spoliation in the occupied countries. That such is the fact, may be accepted without question, but those activities were carried on by Goering through economic missions set up to work with the army and the civilian administration in the occupied territories.

What was done by that organization has little or no connection with the men charged here. Those were requisitions or forced exactions. They were contributions which the occupied territories were required or forced to make. What was said by the IMT has no bearing on whether or not these defendants are guilty of plunder and spoliation, in spite of the great reliance which the opinion and judgment in this case, seem to place on it.

Since the applicable Hague Rules are set out in the Tribunal's judgment, I shall here only refer to those which may have some direct bearing on the facts of this case.

Rule [Article] 46 provides that private property must be respected and cannot be confiscated.

Rule [Article] 47 provides that, "Pillage is formally forbidden."

Rule [Article] 52 provides:

> "Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country."

This rule, which is frequently referred to, it will be noticed, has to do with requisitions only, and that it limits such requisitions to the needs of the army of occupation and provides that they must be in proportion to the resources of the country. Requisitions involve the taking of property without the consent of the owner, but payment of compensation. Attempts to apply these limitations to anything else than requisitions, is certainly not authorized by the Rules.

Rule [Article] 53 provides:

"An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations."

Rule [Article] 55 provides:

"The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."

Generally speaking, these are the rules relating to property which a belligerent occupant is required to observe as a part of the Rules of Land Warfare.

It will be observed that they contain no prohibition against purchases or sales of property located in the belligerent occupied territory. Indeed, it is difficult to see how private property could be respected, if the right to sell it were denied. Much private property, such as the products of factories and of farms, has value only as an article of sale or exchange. There are no prohibitions against purchases either by members of the armed forces or civilians of the occupying power in belligerently occupied territory.

Obviously, a sale represents a mutual agreement by the buyer and seller. It is a bilateral transaction. If it is not that kind of a transaction, but a taking of property by force or duress, it is not a sale but a form of requisition, even though a fair compensation is paid.

The opinion holds that the Hague Rules of Land Warfare apply to all territories occupied by Germany except Austria and the Sudetenland. The same exception, in my judgment, should be applied to Bohemia and Moravia. It was occupied by the German Army, completely subjugated and annexed to the Reich, as completely as was Austria, and there is no valid reason for making a distinction.

The IMT made the distinction on the ground that Bohemia and Moravia had not been annexed to the Reich. But this does not seem to be the fact. It had been annexed. Prosecution Exhibit 1152 (*1397–PS*) is a decree annexing it to the Reich. True, it is given the name of "Protectorate," and a certain apparent autonomy is given to it. But these were grants from the Reich and could be changed at the will of the Reich.

Bohemia and Moravia no longer had any vestige of sovereignty of its own. It became Reich territory and the Reich exercised sovereignty over it as completely as over any other part of its territory. It only exercised it in a little different way. It was not belligerently occupied territory, and the Rules of Land Warfare should not be applied to it.

The situation is different with reference to all the other countries occupied by the German Government in the course of its wars which began on 1 September 1939, some months after both Austria, Bohemia, and Moravia were annexed. They did not completely subjugate and conquer any territory which they occupied as a belligerent in the course of those wars.

Even though a country may be completely occupied, as long as it has not surrendered, but, with the aid of allies, carries on the war, the issue remains undetermined, the occupation continues to be a belligerent occupation. It cannot be changed by an attempt to annex such territory or any part thereof. This was the situation as to all the countries occupied, except France.

The situation as to France seems to me to require a little different treatment, although I realize that in making the suggestion I am faced with the overwhelming weight of opinion of the Nuernberg Tribunals. It is the general rule, which the Hague Convention seems to recognize, that a general armistice, while it does not end the war, fixes the rights of the parties during the armistice period and takes priority over the rules of belligerent occupation to the extent that it enlarges the rights of the occupant.

It seems to me that whatever may have been done in France, in accordance with the armistice agreement and in cooperation with the government of France, should not, therefore, be held criminal on the ground that it violates the Hague Rules of Land Warfare. Those rules are not limitations on the right of a sovereign government to enter into agreements. The reasons given for avoiding such a conclusion—some of them inconsistent—seem entirely unsatisfactory to me.

Our problem here is to determine whether the particular defendant charged, violated these Hague Rules of Belligerent Occupation, for they contain the only rules and customs of war referred to in the definition of the crime. It is not claimed by the prosecution that there are other rules and customs of war which have become so universally practiced and accepted, as to entitle them to recognition here.

KEPPLER

Keppler is convicted as a member of the Aufsichtsrat of DUT. The nature of this organization has been discussed in this sep-

arate opinion in connection with count five. There is no occasion to repeat it here. It is sufficient to say that it was a corporation set up at government expense and supplied with public funds as well as large credits from banks in order to enable it to render a service to those who were forced to resettle in the Reich. To call it a "spoliation agency" is, in my judgment, entirely incorrect. Nothing quoted from the testimony of the witness Metzger changes that picture. Indeed, it appears that what the DUT did, with reference to liquidating a settler's property in the place from which he moved, was in pursuance of a power of attorney. When, then should it be called "seizure"?

The only compulsion was apparently that of circumstances over which the DUT had no control. If a settler was required to move and denied the right to take his furniture and equipment, he had to dispose of it. The DUT was there as a service organization to help him with that task. It not only looked after the liquidation of his property for him, but loaned him additional sums to become rehabilitated in his new location.

It should not be forgotten that this organization served only ethnic Germans who were coming to the Reich to become citizens. Germany was interested in winning their good will and loyalty. DUT was a means to that end. It is hardly likely that it would start out by plundering them and seizing their property. The evidence, in my judgment, fails to show that it did.

But even if in individual cases, the officer in charge did use some force, there is no evidence that such was the policy of DUT or that Keppler, as a member of the governing board, knew about it. Certainly it was not set up for that purpose. (See discussion of Keppler under count five.) Such a policy is inconsistent with its purposes. Under such circumstances, something more would have to be shown to convict Keppler of crime. It would have to appear that he knew and approved of such illegal tactics.

The opinion also indicates that the DUT is criminal because other agencies of government committed crimes. I cannot follow this reasoning. Once it is embarked upon, there is no limit to it. It could as well be said that Darré, for example, is guilty of murder of numerous people in the occupied portion of Russia, because, as Minister of Food, he had charge of the Food Estate and supplied the food that maintained the Einsatzgruppen in that territory; that it was all a part of one operation and the feeding of the troops an essential part, without which the murders could not have been committed. This may seem fanciful, and indeed it is, but it is the same principle on which Keppler is held to have committed the crime of spoliation, insofar as the opinion rests on the proposition that DUT is criminal because some other

agency of government was guilty in bringing people to the Reich, or expelling people from it.

Indeed the Food Estate was far more essential to the operations of the Einsatzgruppen than DUT was to Germanization. People could be moved around and brought into the Reich without any welfare organization like DUT to look after them, and try to mitigate the hardships of their resettlement, but the Einsatzgruppen could not operate at all without the Food Estate.

The conviction of Keppler for being a member of a governing board of a welfare organization is, in my opinion, wholly unjustified.

LAMMERS

I am unable to understand the basis for the conviction of Lammers. He exercised no authority in the occupied territories, and fixed no policy to be pursued there. So far as I can determine, his conviction rests on his personal stature and his knowledge of what others may have been doing, or proposed to do, and the fact that he formulated Hitler decrees.

It seems to be important at the outset to clarify Lammers' position in the government, and the responsibilities of that position.

The Chancellery is a purely service organization which was set up to perform the various detailed tasks connected with the office of the Chancellor. It is a secretariat. It is the Chancellor's office. It serves him much as the less elaborate organization under a secretary serves the President of the United States.

It gathers information and reports for the Chancellor, makes investigations for him, and in general furnishes facilities to keep him advised as to functioning of various governmental departments. It is the contact between the Chancellor and the various ministries. All decisions, directives and other communications of the Chancellor are properly channeled through the Chancellory. All approaches to the Chancellor are made through the Chancellery. In short, it serves as a secretarial office for the Chancellor, in the civilian sector of government. It apparently has nothing to do with the armed services.

It prepares such documents for the Chancellor as he may require.

It makes no decisions with reference to government policy. It is not an executive agency, and therefore, not engaged in enforcing any policies. Decisions which come out of the Chancellery are the decisions of the Chancellor. Hitler was the Chancellor.

Among the tasks performed by the Chancellory was the preparation of decrees which have the effect of laws. Lammers as the head of the Chancellery was particularly well qualified for this task. He was an expert in the field of constitutional and administrative law, and a skilled technician in the drafting of laws. But he acted only as a technician in the formulation of laws and decrees. The substance of the laws and decrees was supplied by others. Hitler, in the case of Fuehrer decrees, and the Cabinet members in the case of Cabinet decrees.

He is held responsible for having drafted Hitler's decrees. It is undisputed that in all such cases, Hitler, as Chancellor, gave directions as to the substance and content of such decrees, and what Lammers did was to formulate them as a technician, for Hitler's signature.

It was the practice for Lammers to cosign Hitler decrees prepared by him. It is not contended by anyone that his signature was necessary to the validity of such decrees. Hitler's power to enact decrees was not dependent upon Lammers joining him. Lammers signature was a certifying signature. It had significance only as between Lammers and Hitler. By it, he certified that he had followed Hitler's instructions as to consultations with others, and ascertained what, if any, objections existed before preparing the decree, and that he would properly distribute or publish the decree after its execution.

The position of head of the Chancellery ordinarily carried the title of State Secretary, and that was Lammers' title in the beginning.

Hitler gave him the title of "Minister," but that did not alter his functions. As a minister he had no ministry. It entitled him to attend Cabinet meetings, but after his appointment, few, if any, were held. He was also given the title of "Chief of the Chancellery," but that only affected his relations with the people working in the Chancellery. It did not enlarge his jurisdiction otherwise.

In my judgment, he cannot properly be held guilty of a crime on the basis of his having prepared and signed with Hitler, Fuehrer decrees. His relationship to those decrees, and responsibility for them, was not substantially different in principle than that of the stenographer who typed them. They were not his decrees, they were Hitler's, and he could not be said to have had a criminal intent in preparing them, even in cases where they required for their execution, the commission of a crime.

In this connection, attention is again called to the holding of Tribunal No. V, Case 7. In that case the chief of staff to a commander, was directed by the commander to issue and distribute

an order for the shooting of hostages at the ratio of 50 to 1, for every member of the armed forces killed by the people of an occupied territory. He prepared the order, signed it himself with his own name, and distributed it to the army. He was held not to be criminally liable. It was not his order, it was the commander's, and it was held that in what he did, no criminal intent existed. It appears that a chief of staff holds a far more responsible position with reference to his commander than Lammers held toward Hitler.

For example, a chief of staff is an adviser to the commander. Lammers was not an adviser to Hitler. A chief of staff is a deputy to the commander, and in the absence of the commander, he is in command. Lammers was not a deputy to Hitler, and did not exercise any of his functions during his absence. If a chief of staff is not to be held liable under the circumstances cited, then a *fortiori*, Lammers cannot be held liable for having formulated Hitler decrees. Moreover, the order signed by the chief of staff required the commission of a crime for its execution. The decrees signed by Lammers did not.

The opinion lays stress on his educational qualifications and his learning in the field of constitutional and administrative law. But that is not a crime. Indeed, it may be due to that fact, and his complete appreciation of the limitations on his position, which kept him out of the policy-making and policy-executing field. It is significant that while nearly everybody else in the Reich government was quarreling over their various competencies and reaching out for power, Lammers never became involved in this. He stayed strictly in his own field.

An effort is made in the opinion to show he had "a certain influence." But all that appears is from his own testimony, and that shows that he influenced decrees at times so far as they related to administrative machinery, that is, he would suggest using an existing organization to carry out the function, rather than create a new one.

He also testified that he used that influence to modify Hitler's tendency to depart from the decencies. How that can prove that he had any influence or tried to exercise any influence to induce Hitler to commit spoliation, I am unable to see.

The opinion states that Lammers cooperated with the program of spoliation. What is meant by such a statement is not clear. People on a highway who hastily vacate the road to make way for a speeding bandit on his way to rob a bank are cooperating with the bandit, but one would hardly say they were guilty of robbing the bank.

Lammers' cooperation must be judged by the things he did, as cited in the opinion. The things he did on which stress is laid are significant. He formulated a decree at Hitler's direction to appoint Seyss-Inquart Commissioner in Holland, and made him subject to Goering's order. This is the sort of thing which, under the name of cooperation, makes Lammers guilty of spoliation according to the opinion. In my judgment it proves nothing.

His distribution of reports and forwarding of reports and other documents, as a part of the work of the Chancellery, seems to be regarded as cooperation also. But it proves only his knowledge that spoliation activities were taking place, if it can be assumed he read all of the reports and documents which passed through his Chancellery. In my view, that does not constitute a crime.

For Lammers, or any other defendant, to be held guilty, it should appear, beyond a reasonable doubt, that he committed some act having a causal connection with spoliation, and did it with the intention of committing spoliation or having it committed. There is no such showing in this record, in my judgment.

What is said here with reference to the responsibility of one who, as a technician, and as a part of his regular work, prepares decrees, at the direction of others who prescribe the content, is equally applicable to the consideration of Lammers' guilt under count five, and to the defendant Stuckart in both counts five and six, to the extent that his guilt is based on the fact that he prepared such decrees.

RASCHE

Rasche was a member of the Vorstand of the Dresdner Bank and active in its affairs. The Dresdner Bank was the second largest commercial bank in Germany. It had many branch banks in Germany and owned many affiliates in other European countries. In Germany much of the financing of industry is done by banks, and Rasche had many contacts in the world of business and industry. In addition he maintained good relations with the government, and especially with the Ministry of Economics.

It has already been indicated that in my judgment there could be no spoliation as a war crime in Bohemia and Moravia because they were a part of the Reich and not belligerently occupied territory.

Rasche's activities there will not, therefore, be considered in detail. He made many purchases, but the evidence that they lacked the character of bilateral transactions, and were not arrived at by the ordinary process of negotiation between seller and buyer, and did not represent the free choice of both parties to the trans-

action, is far from convincing. Indeed, it does not seem to be the chief reliance for conviction. The offense seems to consist in acquiring these properties regardless of how real and fair the purchase, because to do so was an offense against the economy of Bohemia and Moravia, and led to control or domination of the economy of the territory. This will be more clearly shown in what follows.

Rasche is convicted for his activities in Holland. He neither bought nor sold property there. The Dresdner Bank owned at least a controlling interest in a bank in Amsterdam known as the Handelstrust West. It was a Holland banking corporation, with its own staff of officers. It maintained a securities department, which handled securities on a commission basis. Its service was to bring seller and buyer together. Through this department, many properties and securities of enterprises in Holland were sold to German capitalists or industrialists. There is no evidence that it exercised any force or duress to complete these transaction.

Indeed the indictment [paragraph 54] does not charge that these transactions were accomplished by any force. It charges:

> "The defendant Rasche directed and supervised activities of the Dresdner Bank and its affiliates in occupied western areas involving economic exploitation, including particularly activities involving transfer of control of Dutch enterprises to selected German firms through the process called 'Verflechtung,' which was an 'interlacing' of Dutch and German capital and economic interests."

It will be observed that the offense charged here is the mere "transfer of control" of Dutch enterprises to German owners; it assumes they are voluntary. It charges that, in spite of that fact, it is a crime. It is doubtful whether the evidence shows the sales arranged by Handelstrust West involved control.

But assume that they did. And I think it may be assumed also that the purpose in many instances was to secure control of enterprises in order to insure that they would produce for the German economy and war effort, and that high prices were offered and paid for enterprises with that object in view. But if this were a crime who would be guilty of it? Possibly the parties to the transaction, and even the broker who arranged the transaction. But how about the stockholder in the bank which acted as broker? But Rasche was only an officer of a bank which held stock in the bank which acted as broker. But were these transactions crimes? There is no article in the Hague Rules of Land Warfare which prohibits them. Under such circumstances I do not see how it can be said that they violate the rules and customs of war.

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It is not likely that any useful purpose will be served by discussing other individual convictions. If it is obvious that some acts of actual spoliation were committed, such as Pleiger's taking over the deWendel plant in France, and Stuckart's taking the records of an International Society from Amsterdam to Berlin, but these are so joined with other alleged acts of spoliation which go under the name of "participating" in a program, or "cooperating" with a program that the guilt of any defendant convicted is exaggerated, and, therefore, I am unable to concur in the opinion as to any defendant convicted under this count.

To illustrate further what results from convictions based on "participation" consider the letter which Schwerin von Krosigk wrote to Goering and others concerning the activities of the agencies addressed, in the eastern territories. The letter starts out by saying the Reich expected to gain financially from the occupation of these territories, and points out that certain vital materials can be obtained more cheaply from such territories. But the letter goes on to complain about the administration of the territories and the large sums being paid to German nationals for services rendered in the territory, and that was the obvious purpose of the letter. This is said to prove participation, and is strongly emphasized in the opinion. I am unable to see that it proves anything, except that Schwerin von Krosigk, as Finance Minister, was concerned about the waste of public money in an extravagant and wasteful administration of the territories.

To say that the letter constitutes participation in spoliation it must be assumed that the statement in the letter, that the Reich expects financial gain from the occupied territories, is a recognition of the fact that spoliation is occurring, and that his failure to protest or resign constitutes consent to it, and that such consent constitutes participation. I cannot concur either in the premises or the conclusion. The opinion contains many similar illustrations.

Acts of this character, which do not cause any pillage or plunder, and are not intended to do so, fall far short of proving spoliation.

CONCLUSION

I have attempted by explanation and illustration to show why I am unable to concur in the convictions under counts one, three, five, and six.

Except as may have been heretofore otherwise expressed herein, I raise no questions and express no dissenting views as to the decision of the Tribunal concerning counts two, four, seven, and eight.

XVII. ORDERS OF THE TRIBUNAL PERMITTING THE FILING OF MEMORANDA CONCERNING ALLEGED ERRORS

A. Introduction

On 6 April 1949, shortly before the Tribunal rendered its decision and judgment, the Tribunal on its own motion issued an "Order Permitting the Filing of Memoranda Concerning Alleged Errors" that may be found in its judgment. The order permitted "any defendant whose interests are affected" to file within 15 days after decision and judgment "a memorandum calling to the attention of the Tribunal any matters of fact or law which it is believed are in error, together with citations to the record as to the facts, and authorities as to the law which are relied upon in support thereof." On 14 April 1949, the day on which sentences were pronounced, the Tribunal issued a further order with an identical title which extended the time for filing such memoranda from 15 to 25 days. These two orders are reproduced in sections B and C respectively.

B. Tribunal Order Permitting the Filing of Memoranda Concerning Alleged Errors, 6 April 1949

ORDER PERMITTING THE FILING OF MEMORANDA CONCERNING ALLEGED ERRORS

The Tribunal takes note of the fact that there is at present only one Military Tribunal constituted in the American Zone of Occupation pursuant to Control Council Law No. 10 and Military Government Ordinance No. 7. Accordingly, the provisions of Article V (*b*) of Ordinance No. 7, as amended by Ordinance No. 11,* will not be applicable when this Tribunal renders judgment, inasmuch as Article V (*b*) applies only in circumstances where more than one Military Tribunal is in existence. No motion for a joint session of Tribunals will be accepted or considered.

The Tribunal also takes note of the fact that the record of this case is unusually long and presents a multiplicity of issues, legal and factual, and that an opportunity should be afforded, by some appropriate procedure, to draw the attention of the Court to any errors that may be found in its judgment.

IT IS, THEREFORE, ORDERED BY THE TRIBUNAL:

"That any defendant whose interests are affected, may,

* Military Government Ordinances Nos. 7 and 11 are reprinted in full in the introductory parts of volume XII, which is the first volume in this series dealing with the Ministries case.

within 15 days following the rendition of the decision and judgment of the Tribunal, file with the Secretary General a memorandum calling to the attention of the Tribunal any matters of fact or law which it is believed are in error, together with citations to the record as to the facts, and authorities as to the law which are relied upon in support thereof. The memorandum shall specifically refer to the place in the opinion and judgment where it is alleged there is error. Memorandum so filed will be brought to the attention of the Tribunal forthwith for such action as it may deem appropriate to correct such errors. All parties will be notified by the Secretary General of the action taken by the Tribunal with respect thereto. Nothing herein shall be construed to modify the requirement of Regulation Number 1, issued under Ordinance No. 7 as amended by Ordinance No. 11, that petitions for clemency to the Military Governor must be filed within 15 days of the imposition of sentence in open court. No motions to extend the time within which to file such memorandum or to extend the time for which to file petitions for clemency will be considered by the Tribunal."

Nuernberg, Germany
6 April 1949

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge
Tribunal No. IV

C. Tribunal Order Permitting the Filing of Memoranda Concerning Alleged Errors, 14 April 1949, with Memorandum

ORDER PERMITTING THE FILING OF MEMORANDA CONCERNING ALLEGED ERRORS

The Tribunal takes note of the fact that there is at present only one Military Tribunal constituted in the American Zone of Occupation pursuant to Control Council Law No. 10 and Military Government Ordinance No. 7. Accordingly, the provisions of Article V (*b*) of Ordinance No. 7, as amended by Ordinance No. 11, will not be applicable when this Tribunal renders judgment, inasmuch as Article V (*b*) applies only in circumstances where more than one Military Tribunal is in existence. No motion for a joint session of Tribunals will be accepted or considered.

The Tribunal also takes note of the fact that the record of this case is unusually long and presents a multiplicity of issues, legal

and factual, and that an opportunity should be afforded, by some appropriate procedure, to draw the attention of the Court to any errors that may be found in its judgment.

IT IS, THEREFORE, ORDERED BY THE TRIBUNAL:

"(1) That any defendant whose interests are affected, may, within 25 days following the rendition of the decision and judgment of the Tribunal, file with the Secretary General a memorandum calling to the attention of the Tribunal any matters of fact or law which it is believed are in error, together with citations to the record as to the facts, and authorities as to the law which are relied upon in support thereof. The memorandum shall specifically refer to the place in the opinion and judgment where it is alleged there is error. Memorandum so filed will be brought to the attention of the Tribunal forthwith for such action as it may deem appropriate to correct such errors. All parties will be notified by the Secretary General of the action taken by the Tribunal with respect thereto. Nothing herein shall be construed to modify the requirement of Regulation Number 1, issued under Ordinance Number 7 as amended by Ordinance Number 11, that petitions for clemency to the Military Governor must be filed within 15 days of the imposition of sentence in open court. No motions to extend the time within which to file such memorandum or to extend the time for which to file petitions for clemency will be considered by the Tribunal.

Memorandum hereto attached is made a part of this order.

Nuernberg, Germany
14 April 1949

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge
Tribunal IV

MEMORANDUM

It is intended that the foregoing order shall supersede and take the place of that certain order made by the Tribunal on 6 April 1949 and filed with the Secretary General on 7 April 1949. The said order of 6 April 1949, provided that the defendants might file memoranda calling attention to claimed errors, of fact or law in the judgment in Case No. 11 within 15 days following the rendition of decision and judgment of the Tribunal in said case. The above order is similar in tenor to the order of 6 April, except that the foregoing order gives the defendant 25 days instead of 15 in which to file said memoranda with respect to claimed errors of fact or law."

XVIII. ORDERS AND MEMORANDA OF THE TRIBUNAL AND MEMORANDA OF INDIVIDUAL MEMBERS OF THE TRIBUNAL ON DEFENSE MOTIONS TO SET ASIDE THE JUDGMENT OR FOR THE CORRECTION OF ALLEGED ERRORS OF FACT AND LAW IN THE JUDGMENT

A. Introduction

On 14 April 1949, following the rendition of judgment and imposition of sentences, 17 of the defendants filed a motion to set aside the decision and judgment of the Tribunal on various grounds. The Tribunal denied this motion by order of 12 December 1949. This order is reproduced in section B.

After the judgment 19 of the defendants filed individual motions for the correction of alleged errors of fact and law in the judgment pursuant to the Tribunal's orders permitting the filing of such motions. (See section XVII, above.) The defendant Bohle abandoned his motion before the Tribunal ruled on it. On 12 December 1949, the Tribunal issued a general order on these motions as well as separate orders on each of the outstanding motions of individual defendants. Each of the separate orders incorporated a memorandum stating the Tribunal's reasons for its ruling. In fifteen cases the Tribunal rejected the motions of the defendants. In three cases the Tribunal granted the defense motions in part and denied them in part. The orders on the motions of the defendants von Weizsaecker and Woermann set aside their conviction on count one (Aggressive War) but denied the motions to set aside their conviction on count five (Atrocities and Offenses Committed Against Civilian Populations). The order on the motion of the defendant Steengracht von Moyland set aside his conviction on count three (Murder and Ill-Treatment of Belligerents and Prisoners of War) but denied his motion to set aside his conviction on count five. These three orders also reduced the sentences of the defendants von Weizsaecker, Steengracht von Moyland, and Woermann from 7 to 5 years imprisonment.

Presiding Judge Christianson dissented from the Tribunal's modification of the judgment in each of these three cases and noted the general reasons for his dissent in separate memoranda. Judge Powers filed a separate memorandum opinion concerning various motions. All of these orders and memoranda are reproduced in sections C to E.

B. Order on the Defense Motion to Set Aside the Tribunal's Decision and Judgment, 12 December 1949

ORDER

On 14 April 1949 following the rendition of judgment and the imposition of sentences in the above case, the following defendants, to wit: Ernst von Weizsaecker, Gustav Adolf Steengracht von Moyland, Wilhelm Keppler, Ernst Woermann, Karl Ritter, Edmund Veesenmayer, Hans Heinrich Lammers, Wilhelm Stuckart, Richard Walther Darré, Otto Dietrich, Gottlob Berger, Walter Schellenberg, Lutz Schwerin von Krosigk, Emil Puhl, Paul Koerner, Paul Pleiger, and Hans Kehrl presented to and filed with the Tribunal a motion to set aside the decision and judgment of conviction "on the grounds that said decision and judgment is contrary to the facts, contrary to law, and against the weight of the evidence; on the ground that this Court has no jurisdiction to hear and determine the alleged charges, and on the further ground that the facts alleged and the facts found do not constitute an offense against the law of nations or against the laws of the sovereign power of the United States," and on the ground "that the rulings made are not in conformity with the principles of the due process of law, and the Constitution and laws of the United States, the international law, and the rules of law generally applicable to the trial of criminal cases," and on the further ground "that the individual justices thereof were without power to act and the Tribunal as a whole was never legally established and its said decision and judgment constitutes an arbitrary exercise of military power over each of the said defendants, in violation of the laws of nations and agreements made by the belligerent powers and other countries appertaining thereto."

Insofar as individual defendants have filed motions to set aside their respective convictions on the ground that the Court's judgment is contrary to the law and against the weight of the evidence, the Tribunal reserves the right to and will consider and determine those issues in its orders passing upon the individual motions to set aside judgments of conviction.

The Tribunal having considered said motion and being advised in the premises, it is ORDERED that said motion be and the same is hereby in all respects denied.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
[Signed] ROBERT F. MAGUIRE
Judges of Tribunal IV

C. General Order on the Individual Motions by Defendants for Correction of Alleged Errors of Fact and Law in the Judgment, 12 December 1949

GENERAL

The defendants von Weizsaecker, Steengracht von Moyland, Keppler, Woermann, Ritter, Veesenmayer, Lammers, Stuckart, Darré, Dietrich, Berger, Schellenberg, Schwerin von Krosigk, Puhl, Koerner, Pleiger, Kehrl, and Rasche have filed individual motions for correction of alleged errors of law and fact contained in the Tribunal's judgment. The defendant Bohle filed but has since abandoned a like motion.

In dealing with these motions, the Tribunal has had constantly in mind the diversity of the charges of criminality included in the indictment, the number of defendants involved, the numerous and intricate questions of law and fact necessarily to be considered and determined, the length of the record to be considered, and the absence of any appellate procedure.

It felt that notwithstanding any diligence which it might exercise, the possibility of error was present. To the end that justice shall be done and errors of fact and law corrected, it entered an order permitting the defendants to file motions calling attention to any alleged errors in its judgment.

The defendants have availed themselves of the right thus accorded them, and it becomes necessary for the Court to consider motions (which in the aggregate cover several hundred pages), which represent most of the contentions which were presented by their original briefs. We have painstakingly considered them and have re-addressed ourselves to the record to determine whether and where the Tribunal may have erred. *In limine* certain general observations should be made. It is not the function or within the power or jurisdiction of these Tribunals to consider political considerations or exercise either pardoning power or executive clemency. Its jurisdiction is to find the facts and apply the law as it conceives it to be. In proper cases where conviction becomes necessary extenuating circumstances may be considered in determining the sentence to be passed. Should it proceed otherwise, the Tribunal would exceed its jurisdiction and invade fields which belong exclusively to the executive branch of the military government.

In considering the defense motions which have been interposed, the Tribunal makes no claim to infallibility, either as to past or

present determinations. Of necessity, it must be content, when after a careful consideration of the questions involved, it arrives at maturely considered conclusions. Many of the errors asserted depend upon the evaluation of disputed testimony and the acceptance or rejection of testimony, either documentary or oral. This, however, is not a novel situation. In all litigation, criminal or civil, the triers of facts, whether juries or judges, do not act *in vacuo*. They do not and should not count witnesses but weigh evidence. Evidence is judged by its inherent probabilities or improbabilities, the bearing, demeanor, frankness of witnesses, contradictory evidence, together with other indicia of truth or falsity.

There are no mathematical, mechanical, or scientific formulas which can be applied in determining where the truth lies. Where the determination of fact affects, as it does here, the liberty or reputation of a defendant, the responsibility of decision is a heavy one, but neither difficulty of determination nor possibility of error relieves the triers of fact of the duty of declaring the truth as they see it. In exercising these functions, we do not, as judges, abandon our experience and knowledge as men, and we apply the same tests which as practical men we would in reaching conclusions upon which we would be willing to base a decision in our own most serious affairs of life. There is not and never has been a formula of precision. Proof of guilt beyond a reasonable doubt does not involve mathematical demonstration nor proof beyond fanciful or factious doubt. It is proof to a moral but not a mathematical certainty.

The judgment of the Tribunal made no pretense of quoting or referring to all evidence regarding a particular point, and the failure to discuss the testimony of any witness or witnesses or particular exhibits does not indicate that such evidence has been disregarded.

In determining these motions we have examined, not only the briefs and arguments offered in support thereof, but the testimony relating to the defendants' participation in the matters involved and the testimony offered in defense. The orders which we have entered represent conclusions and determinations arrived at only after meticulous consideration of the issues. Neither in the orders nor the memoranda is it possible to cite all the evidence relied on for conviction or offered in defense.

We have made specific orders disposing of each of these motions, and what is said in this order is by reference made a

part of the orders and memoranda concerning each of these motions.

Dated this 12th day of December, 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

D. Orders and Memoranda on the Motions of Individual Defendants for the Correction of Alleged Errors of Fact and Law in the Judgment, 12 December 1949

1. VON WEIZSAECKER—ORDER AND MEMORANDUM OF THE TRIBUNAL AND SEPARATE MEMORANDUM OF PRESIDING JUDGE CHRISTIANSON

ORDER

On 10 May 1949 a motion was filed on behalf of the defendant Ernst von Weizsaecker praying that the Tribunal's judgment of 14 April 1949 be amended to revoke its findings of guilt against said defendant on counts one and five of the indictment, and that the defendant be released from custody. On 19 June 1949 the prosecution filed an answering brief to said motion and the defendant later filed a rejoinder to the prosecution's answering brief. It also appears that on 25 April 1949 the defendant joined in a petition for a plenary session of the Tribunal for the expressed purpose of "examining the judgment passed on 14 April 1949 by Military Tribunal IV."

The Tribunal having considered said motion and the briefs filed in relation thereto and being advised in the premises,

IT IS ORDERED that the defendant von Weizsaecker's motion as to count five be and the same is hereby in all respects denied. Von Weizsaecker's motion as to count one is sustained, the judgment modified *pro tanto* and his sentence is modified and reduced from 7 years to 5 years, and shall be deemed to have begun on 25 July, 1947.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge.

I concur in above as to count five but not as to count one. See my separate memo.

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

[Signed] LEON W. POWERS*
LEON W. POWERS
Judge

MEMORANDUM

The defendant von Weizsaecker was convicted on two counts: one and five. He was acquitted on all other counts. As to count one, the Tribunal found him not guilty in connection with the aggressions against Austria, Poland, the United Kingdom, France, Denmark, Norway, Belgium, the Netherlands, Luxembourg, Yugoslavia, Greece, Russia, and the United States of America. It found him guilty because of his connection with the aggression against Czechoslovakia which took place on 15 March 1939 when Germany marched into that unfortunate country, dissolved it as a national entity, and attempted to incorporate it as a protectorate into the German State. Defense counsel insists that the Tribunal not only erred in its evaluation of the testimony, but that it erroneously considered evidence which had been rejected as inadmissible and that it has used evidence which the defense has never seen, and finally that it is prejudiced against the defendant.

Before discussing the main question, namely whether the Tribunal erred in its evaluation of the testimony and that the record not only fails to establish guilt but demonstrates the defendant's innocence, we shall advert briefly to the suggestions that rejected evidence was made one of the bases of the finding of guilt, that the Tribunal considered evidence which the defense has never seen, and that the majority of the Tribunal were prejudiced against the defendant. As to the first, the defendant asserts that document NG–5750, the minutes of the von Ribbentrop-Hitler meeting of 11 October 1938, was offered as Exhibit 325 in prosecution document book 204 and was rejected. Counsel for the defense overlooked the fact that this document was offered on 18 October 1948 as Exhibit C–348 and by order of the Tribunal was received in evidence on 15 November 1948. In a large number of cases where duplicate but separate offers were made of documentary exhibits, one or the other was rejected, and in some instances where an

* Judge Powers wrote a separate memorandum opinion (section E) concerning his signing of the Tribunal orders on the motions of the defendants von Weizsaecker, Steengracht von Moyland, and Woermann and concerning the absence of his signature on the Tribunal orders on the other individual motions.

offer was made of a document at a particular stage of the case an objection may have been made and sustained, and when re-offered at another stage or upon another point, admitted.

The document in question was properly admitted and considered by the Tribunal.

The assertion that the Tribunal considered evidence which the defense has never seen, if true, would constitute a grave breach of judicial duty. It is, however, wholly without foundation in fact. Whether the defendant was interrogated by the prosecution prior to the trial and, if so, whether that interrogation was reduced to writing is unknown to the Tribunal. If such was the case, the Tribunal never saw such interrogations nor was it informed of their contents. The statement found on page 48 of the judgment was based solely on the record. (*Tr. pp. 9236–9237.*) The Tribunal gave no consideration either to the statement of the prosecution that von Weizsaecker had not mentioned "a word of his alleged resistance activities * * * to the prosecution in this case prior to his indictment" (*Prosecution Brief, p. 8*) or the statement of the defense that "already in the spring of 1947 when von Weizsaecker came to Nuernberg for this purpose Mr. Kempner, f.i., discussed extensively the Talleyrand parallel with von Weizsaecker in an interrogation which he attended as a free man." (*Defense Reply Brief, p. 134.*) Neither was a statement of evidence.

The defendant's testimony regarding this matter was as follows:

> "Q. Very well. In your examination before the IMT on the Raeder case did you say a single word in connection with your resistance activity?
>
> "A. I did not. I do not think so; I was not asked about it.
>
> "Q. When you gave affidavits for various subordinates for denazification purposes did you mention anything of your own connection with the resistance movement?
>
> "A. I did not. I am not a man to boast about himself.
>
> "Q. But would not that have been important in order to show your own position to the addressees?
>
> "A. I do not like to put myself in the limelight."

In attempting to reach an accurate evaluation of the facts relating to the defendant, it was unfortunate that his attitude was such as to cast doubt as to his frankness and candor. We found it necessary to advert to his exceeding caution on cross-examination, his claim of lack of recollection of events of importance and his insistence before testifying about many subjects that he be confronted with documents.

It now appears that this was primarily based on advice given him before and during the trial by both his American and German counsel. Men remember events even though they may be uncertain as to the exact language of documents. To advise any witness not to testify as to recollection of events unless a document should be produced regarding the same is improper, and had the Tribunal been informed that this advice had been given, its impropriety would immediately been made clear both to the counsel and the defendant.

The statements of the Court to which counsel refer in their motion as justification were made after it became evident that unless and until the documents relating to a subject matter were presented to the witness, testimony regarding the matter could not be elicited.

In considering von Weizsaecker's defense respecting each charge against him, the Tribunal endeavored to ascertain and determine the facts. Much of the defendant's own testimony regarding events was vague, as was that of many of his witnesses. Too often there was a lamentable failure to be definite either as to time, persons, or the substance of alleged conversations and acts. This characteristic extended not only to his own official actions but his connection with the so-called underground resistance movement. We have extended to the defendant not only the presumption of innocence, but in every case where there was doubt, and there were many of them, we have accorded him the benefit of the doubt.

The defendant now asserting that the Tribunal has not properly evaluated the testimony regarding his connection with the aggression against Czechoslovakia, it becomes our duty to reexamine the matter. Our order permitting such motions was prompted by a desire to correct any errors of law or fact which through inadvertence may have been made that they could be corrected and justice done.

We have reexamined the entire record relating to this phase of the case. We have, as we should, limited ourselves to the record and have declined to consider any extraneous matters, such as were included in defense counsel's communication of 8 July 1949, which beyond argument are not properly before us and should not have been submitted.

We held that von Weizsaecker did not originate this aggression and that in our opinion he did not look upon it with favor. We further held that inner disapproval is not a defense if the defendant became a party to, aided in, abetted, or took a consenting part therein. This is and always has been a fundamental principle of criminal law. To it we adhere.

Nevertheless, the serious question exists whether or not von Weizsaecker's connection with this aggression was of such a character and of such importance as to warrant a finding of guilt. To correctly answer this question, it is necessary to reconstruct the situation as it actually existed, keeping in mind all the manifold circumstances of the time, fraught as it was with tensions, beset by uncertainties, and affected by personalities and political situations existing not only in Germany but in England, France, Italy, and Czechoslovakia.

We held that the plan to swallow Czechoslovakia was Hitler's. It had the undoubted and enthusiastic support of von Ribbentrop. The incitement of Slovakia was a part of the scheme, the declaration of Slovakia's independence was induced if not commanded by Hitler; the fatal visit of Hacha to Berlin was a necessary corollary and one of the steps taken pursuant to that plan. The browbeating and, as the defendant himself said, the blackmailing pressure put upon the unfortunate President of the Czech Republic was carried out by Hitler and his immediate associates; the Wehrmacht embarked on its invasion hours before the Czech President had been overpowered by Hitler's threats. Von Weizsaecker did not participate in any of these steps, he did not advise that they be taken, and as we held, we do not believe that they had his approval. This of itself, however, would not exonerate him if, in carrying out Hitler's plan, he took a part either in lulling Czech suspicion or in misrepresenting the planned course of Nazi action, either to the French or the English, with a view to forestalling timely diplomatic or other action on the part of those nations. One may become *particeps criminis* by doing either.

We are still of the opinion, concerning the final operation against the Czech Republic, von Weizsaecker became convinced that, if undertaken, neither France nor England would go to war in protest against what the defendant himself admits was a plain breach of the language and the spirit of the Munich Agreement, and that he therefore viewed this aggression of Hitler's as less dangerous to Germany than either Hitler's demands before Munich, which preceded, or the Polish maneuvers which succeeded it, and that his efforts to inform and warn the Western Powers were less positive and were in fact half-hearted. We find no reason to change our evaluation of the Altenburg report or our findings that the defendant von Weizsaecker was aware of Hitler's plans, even though he may not have been kept informed of precisely when or how they were to be put into execution. He so testified. (*Tr. p. 7731.*)

The judgment refers to his conference of 22 December 1938, with Coulondre, the French Ambassador, those with Magistrati of the Italian Embassy held on 28 December, and the reply to the British note of 8 February 1939 regarding the Czechoslovakian guaranty, which was prepared under the defendant's supervision and in part, at least, by him; his interview of 22 February 1939 with the Czech Chargé d'Affaires, and his conference of 3 March 1939 with Mastny, the Czech Minister. These are the essential documents relating to von Weizsaecker's participation in the aggression against Czechoslovakia. The statements which he made on 15 and 18 March to the French and British Ambassadors, both of which took place after the aggression, were cited and are important only as they may throw light upon von Weizsaecker's actual state of mind and feeling and enable the Tribunal to determine the truth or falsity of the claims he now makes of distaste for and disapproval of Hitler's action.

None of these documents put von Weizsaecker in an amiable light or evidence either distaste or disapproval, contain many statements which von Weizsaecker knew and admits were false, and were official attempts to justify what he admits to have been unjustifiable. Nevertheless, we are here concerned with the legal effect of acts and not questions of individual or diplomatic morality.

It must be conceded that he made no attempt to mislead the Czechs, either as to the precarious situation in which their country was placed or as to the intentions or attitude of Germany, and it is apparent from von Weizsaecker's comments that the Czech Minister and Chargé d'Affaires were under no illusions as to the danger in which their country was placed and had little doubt as to Hitler's plans. Nor can there be any doubt that the statement of the German position given to the French and British Governments was such as to put them on notice that Germany repudiated the agreement which Hitler had made in Munich regarding the guaranty of the remainder of the Czech State. It could not and did not allay either into a sense of false security.

Had the evidence disclosed that von Weizsaecker had either joined in making or carrying out the planned aggression or that, knowing it, he had attempted to deceive the Czechs, the British, or the French regarding the same, a verdict of guilty would be imperative.

After a careful examination of the entire record concerning his connection with the aggression against Czechoslovakia, we are convinced that our finding of guilt as to that crime was erroneous. We are glad to correct it. The judgment of guilt against the

defendant von Weizsaecker as to count one is hereby set aside and he is hereby acquitted under count one.

In discussing the question of defendant's guilt under count one, the Tribunal commented upon the failure of the witness Burckhardt to appear for cross-examination, and for that reason declined to consider what purported to be portions of his diary. The question of the production of the entire diary and the appearance of Dr. Burckhardt for examination was the subject of a number of conferences with counsel for the prosecution and the defense. It is the recollection of members of the Tribunal who were present at these conferences that they were informed that Dr. Burckhardt's government would not permit him to produce the remainder of the diary because of comments therein contained relating to living persons, or permit him to be cross-examined regarding the matter, and that the diary was finally received for what the Tribunal, under the circumstances, might consider it to be worth. We recognize the language difficulties which existed in carrying on these conferences, and it may well be that a misunderstanding arose and either counsel did not accurately express himself or the Tribunal did not correctly understand him. Under these circumstances, the comment referred to may be unjust both to Dr. Burckhardt and to his government, a matter which the Tribunal would greatly regret. We therefore expunge our remarks regarding both. Having acquitted the defendant von Weizsaecker on the charges as to which the diary entry is alleged to have been material, it is unnecessary to say more.

The defendant complains that his handwritten memorandum was incorrectly quoted as reading "to be selected by the police" while the proper translation as shown in Document Book 60 is "described in detail of the police record." This exhibit was offered and received on 18 March 1948 and on that occasion the prosecution stated that the proper translation was as we have stated. (*Tr. p. 3525.*) The defense made no objection and the Tribunal thereupon made the necessary correction in its copies of the document. Corrections of this kind were by no means unusual. Before the end of the trial the prosecution and defense agreed on many hundreds of such corrections, which were laboriously made in the court records. But if we assume that the translation quoted is erroneous, and for the purpose of our present ruling we make this assumption, and that the translation suggested by the defendant is accurate, no different conclusion is permissible. It was not contended that the Jews whose names were found in the police records in France were themselves criminals. Such notations amounted merely to a registration. Even if it were conceded that Jews whose names appeared upon those

records were of the criminal classes, deportation in Germany to slave labor or death would be no less a violation of international law.

We found von Weizsaecker and Woermann guilty because when an official inquiry was made as to whether or not the Foreign Office had any objection to these deportations they answered in the negative, in face of the fact that they both knew and realized that the proposal was a clear violation of international law. So far as guilt is concerned it is immaterial whether the victims were to be selected by the police or whether they were "described" in detail in police records. No claim is made that these Jews who were described in the police records were in fact criminals.

The defendants von Weizsaecker and Woermann insist that our judgment against them on count five is based upon the false hypothesis that at the time they had knowledge of the extermination program established in Auschwitz. Such is not the fact. We were and are convinced beyond reasonable doubt that both were aware that the deportation of Jews from occupied countries to Germany and the East meant their ultimate death. No one can read the record concerning the Dutch Jews and have any question as to the fact.

[Pros.] Exhibits 1677, 1678 and 1679 [*documents NG–2805, NG–2710, and NG–3700*], Book 60 B, concern some 600 Dutch Jews who in 1941 were deported to Germany. Woermann in reporting this to von Ribbentrop and von Weizsaecker stated that Bene had informed him as the result of the slaying of a W. A. man by unidentified Jewish assassins "400 Jews have been brought from the Netherlands to Germany to '*work*' here." (The italics are Woermann's.) In October 1941, Albrecht reported von Weizsaecker that the Swedish Minister had stated that his requests for permission to visit the concentration camp at Mauthausen where these Jews had been confined had not been granted, and renewed his request, calling attention to the fact that more than 400 of them, mostly young men, had already died, and that it appeared from the death lists that these deaths appeared to have occurred on certain days each time. We have referred to the other details regarding this incident in the judgment.

In an attempt to persuade us that these concentration camps, including Auschwitz, were merely labor camps and not murder factories until after 1942, the defense has offered much testimony. An analysis reveals that great care was exercised not to state that prior to that time Jews merely labored and were not murdered, but to emphasize that the *mass* murder program had not been instituted until after 1942, when convoys of Jews were

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driven into the gas chambers immediately on arrival at the camps. Nevertheless, the carefully guarded language used in these affidavits and in this testimony makes no attempt to deny that for several years before that date starvation, privation and labor to exhaustion, death, and indiscriminate murder was the order of the day. The Mauthausen incident which related to the Dutch Jews establishes this.

The majority of the Tribunal gave consideration to and found themselves under the necessity of rejecting the views expressed by one of its members, Mr. Justice Powers, "That no ground therefor based on foreign politics existed for objection * * * so the so-called consent of von Weizsaecker and Woermann was merely the recognition of the fact that conditions were absent which gave them the right to object on the ground of foreign policy."

We were and are of the opinion that the learned Judge misconceived both the facts and the law. The Foreign Office was the only official agency of the Reich which had either jurisdiction or right to advise the government as to whether or not proposed German action was in accordance with or contrary to the principles of international law. While admittedly it could not compel the government or Hitler to follow its advice, the defendants von Weizsaecker and Woermann had both the duty and responsibility of advising truthfully and accurately. Being the only official repository of international usage and duty and being itself charged with matters relating to foreign politics, its leaders could not avoid responsibility by merely considering whether or not, irrespective of legal right, a crime under international law could be successfully committed, either with or without the consent of the government of the nationals affected by the proposed action, putting aside the question of whether in given cases the alleged consent of the second government was voluntary or induced by fear or threats. We have no hesitation in holding that in such a case a crime against humanity is committed by the responsible heads of the consenting government as well as by those of the state which actually commits such crimes. The likelihood either that a crime against international law can be concealed or that offenders will be so successful that no prosecution is to be apprehended constitutes no defense. If anything, such action constitutes matters of aggravation. We know of no principle of law, national or international, which asserts that murder becomes legal because a natural person or a state gives its consent thereto.

Nor is there merit to the condition that the evacuation had already been finally decided upon prior to 4 March 1941 and

thereafter it is immaterial whether the Foreign Office gave or withheld its consent. We have no doubt that Hitler and the Nazi police organizations had planned and desired to do what was finally done, namely to deport these unfortunate Jews from France to their death in the East. This, however, does not negative the importance of the fact that before the act was committed inquiry was made of the department of the Reich, whose duty it was to pass and advise upon questions of international law, as to whether or not it had any objection to the proposal. The only advice it could give within its sphere of competence and the only objection it could raise from an official standpoint was that the proposed program did or did not violate international law, and whether, irrespective of its legality, unfavorable foreign political developments would arise. If the program was in violation of international law the duty was absolute to so inform the inquiring branch of the government. If, notwithstanding this, the latter concluded to proceed, the Foreign Office and its officials would have fulfilled their official duty and would be entitled to exoneration. Unfortunately, for Woermann and his chief von Weizsaecker, they did not fulfil that duty. When Woermann approved the language "the Foreign Office has no misgivings" and von Weizsaecker changed it to the phrase "has no objections," which phrases so far as this case is concerned are almost synonymous, they gave the "go ahead" signal to the criminals who desired to commit the crime. Under such circumstances, it is idle to speculate as to whether or not contrary advice would have been followed. There is a vast difference between saying "no" and saying "no objection." The first would exonerate, the second is criminal.

There is no merit in the assertion that Woermann had no competence in the matter in question. Luther's Department Germany did not act without obtaining the consent and without following directive of its superiors, Woermann and von Weizsaecker. It submitted the matter to them and acted in accordance with their approval.

We have carefully reviewed the evidence both of defense and prosecution relating to the convictions of the defendants von Weizsaecker and Woermann on count five, and have considered the motions relating thereto. We overrule and deny the motions and adhere to the findings of guilt as stated in our judgment.

Judge Christianson dissents from the Tribunal's action in setting aside the defendant von Weizsaecker's conviction under count one, and his memorandum setting forth his views follows.

SEPARATE MEMORANDUM OF JUDGE CHRISTIANSON WITH RESPECT TO ORDER AND RECOMMENDATION THAT CONVICTION OF DEFENDANT VON WEIZSAECKER UNDER COUNT ONE BE SET ASIDE AND HIS SENTENCE REDUCED

I am unable to concur in the order or recommendation of the majority with respect to the conviction of defendant von Weizsaecker under count one. I cannot agree that the majority of the Tribunal in the original judgment erroneously evaluated the evidence with respect to said matter as is now indicated to be the view of my colleagues with respect to the defendant von Weizsaecker's conviction under count one.

A re-examination of the evidence with respect to the actions of defendant von Weizsaecker in connection with the aggression against Czechoslovakia deepens my conviction that said defendant is guilty under said count one. I am therefore unable to concur in the order or recommendation of my colleagues that the conviction of said von Weizsaecker under count one, be set aside and his sentence reduced.

[Signed] WILLIAM C. CHRISTIANSON

2. STEENGRACHT VON MOYLAND—ORDER AND MEMORANDUM OF THE TRIBUNAL AND SEPARATE MEMORANDUM OF PRESIDING JUDGE CHRISTIANSON

ORDER

On 20 May 1949 the defendant Steengracht von Moyland filed a motion praying that his conviction under counts three and five be quashed. Briefs regarding these motions were filed on behalf of the defendant and the prosecution.

The defendant Steengracht von Moyland also joined in a petition for plenary session of the Tribunal for the purpose of "examining the judgment" rendered in this case on 14 April 1949.

The Tribunal having considered the motions of the defendant, the briefs, and the record in the case and being advised in the premises,

IT IS ORDERED that the defendant's motion as to count three is sustained, the judgment modified *pro tanto* in that his conviction under count three is set aside and the judgment of sentence is modified and reduced from 7 years to 5 years, and shall be

deemed to have begun on 23 May 1945. The defendant's motion as to his conviction under count five is in all respects denied.

The memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

I concur in the above as to count five, but not as to count three. See my separate memo.

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

[Signed] LEON W. POWERS
LEON W. POWERS
Judge

MEMORANDUM

We have reexamined the evidence concerning Steengracht von Moyland's connection with the affair of the Sagan murders. Our judgment detailed his alleged participation therein. The note delivered to the Swiss Government, the Protecting Power, was false. It was designed to conceal from the Protecting Power the facts regarding these murders. If, at the time of the delivery of the note, Steengracht von Moyland knew the facts or knew that the explanation was false, then our judgment of guilt is proper.

The question is whether he possessed this knowledge. It is to be remembered that he did not prepare the note but that it was the work of Ritter and Albrecht and that it came to him for purposes of transmittal to the Swiss representative. On reexamination of the record we are of the opinion that it is not established beyond a reasonable doubt that Steengracht von Moyland had the requisite knowledge, even though we are of the opinion that in all likelihood he did. But where there is a reasonable doubt it is our duty to accord it to him. This we do. We set aside his conviction under count three.

Count five. We have carefully reviewed our decision convicting Steengracht von Moyland under count five in view of the ingenious and earnest representations made on his behalf by his counsel. Unfortunately, this review only confirms the findings and conclusions stated in our opinion. With respect to Steengracht von Moyland, as well as the other defendants, we had in the first instance gone as far as human credulity would permit. In fact, in many instances, out of proper regard for the essential doctrine of proof beyond a reasonable doubt, we have stretched that salutary principle almost beyond recognizable form. There are, however, limi-

tations beyond which this cannot be done. A reexamination of the evidence, the testimony submitted on his behalf, and the ingenious presentation of his counsel compels us to the conclusion, not only that no injustice has been done the defendant, Steengracht von Moyland, but that our findings of guilt respecting him are unavoidable. We overrule and deny his motions to set aside his conviction under count five.

Judge Christianson dissents from the Tribunal's action in setting aside the defendant Steengracht von Moyland's conviction under count three, and his memorandum setting forth his views follows.

SEPARATE MEMORANDUM OF JUDGE CHRISTIANSON WITH RESPECT TO RECOMMENDATION OR ORDER THAT CONVICTION OF DEFENDANT STEENGRACHT VON MOYLAND WITH RESPECT TO COUNT THREE BE SET ASIDE AND HIS SENTENCE REDUCED

I find no justification for a change of view as to the finding of guilt against defendant Steengracht von Moyland with respect to count three. I am satisfied beyond a reasonable doubt that said defendant is guilty under such count three. I do not therefore concur in the majority order or recommendation for vacation of the judgment as to defendant's conviction under count three and for a reduction of said defendant's sentence.

[Signed] WILLIAM C. CHRISTIANSON

3. KEPPLER—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

The defendant Keppler has filed with the Secretary General a memorandum, dated 12 May 1949, claiming errors in the judgment in this case, with respect to the conviction of said defendant under counts one, five, six, and eight of the indictment, and requesting that said alleged errors be corrected and the finding of guilt against said defendant Keppler under said counts be quashed and that "the sentence be amended or the penalty reduced."

It appears that prior to the date of the foregoing memorandum, the defendant joined in a petition for plenary session of the Tribunals, for the purpose of examining "the judgment passed on 14 April 1949, by Military Tribunal IV in case 11."

On 16 June 1949, the prosecution filed an answering brief to the said memorandum of the defendant, and on 30 June 1949, the defendant filed a rejoinder to said prosecution's answering brief.

The Tribunal having considered the memorandum and motion therein, the answering brief thereto, and the rejoinder of defendants said answering brief, and being advised in the premises,

IT IS ORDERED that said defendant's memorandum and motion therein, be and the same are hereby in all respect denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

It will be noted that reference is made in the foregoing order to the fact that the defendant joined in petition for plenary session of the Tribunals. As heretofore indicated in other orders made by the Tribunal, such petition could not be, and was not considered or granted by the Tribunal. The arguments against the convictions made by defendants in such petition for plenary session, however, have been considered by the Tribunal in connection with its consideration of defendant Keppler's memorandum and motion herein.

We will now consider the counts involved in said memorandum, and under which counts the defendant was convicted.

We have reviewed the testimony regarding Keppler's connection with the aggression against Austria, in view of the claims made by the defendant in his motion. We adhere to the findings and conclusions expressed in our judgment. His connection with the aggression is clear, he was in fact the direct representative of Hitler, and engaged in carrying out the plans for the invasions, which had already been made before he left for Vienna. He carried out his instructions, he delivered an ultimatum to President Miklas, the Party organizations had taken possession of the capitol and ousted the lawful representatives of the Austrian Government in accordance with the German plans and orders before German troops actually entered Austria. The fact that this action was so successful, and the invasion of the sovereignty of Austria so complete that, on the fateful night, he attempted to inform Hitler that an armed invasion by Wehrmacht was not

necessary, does not change the nature of his acts or relieve him from guilt. We overrule and deny his motion for acquittal under count one as to Austria.

There is no substance to his motion regarding his conviction as a participant in the aggression against Czechoslovakia. While Slovakia may have been autonomous so far as its local government was concerned, it was an integral part of the Czechoslovakian State. Keppler played an important part in carrying out Hitler's plans for the dissolution of that state. Nor is it a fact that no armed resistance was offered to the German troops on their march into Bohemia and Moravia. Actual conflict took place. True, it was slight but this was due to the overwhelming might of the German Army, and the duress imposed on the unfortunate President Hacha. We find no error in fact or law regarding the defendant's conviction under count one arising out of the aggression against Czechoslovakia, and overrule and deny his motion to set aside his conviction with regard thereto.

We have considered defendant's motion to set aside his conviction under count one, and find it to be without substance. We adhere to the findings and conclusions expressed in our judgment and his motion is overruled and denied.

The reconsideration of the questions of fact and law relating to Keppler's conviction under count five discloses no error. We adhere to the findings and conclusions stated in our judgment and the defendant's motion to set aside his conviction under count five should be and hereby is denied.

With respect to count six, the charge of spoliation is sustained as against Keppler, and he is found guilty under such count. It is contended in the memorandum that Keppler was not involved nor responsible for the acts of spoliation involved in this count, and what we consider an unconvincing effort is made to minimize the testimony of Metzger, the former employee of the DUT. The findings under count six with respect to Keppler should be considered in connection with those made with respect to him under count five, where the activities of the DUT are gone into, which fact is indicated in our treatment of count six of the indictment.

We have reexamined the records in view of the defendant Keppler's motion to set aside his conviction under count eight. We find no error in fact or law and we adhere to the views expressed in our judgment. The defendant's motion to set aside his conviction under count eight should be and hereby is overruled and denied.

4. WOERMANN—ORDER AND MEMORANDUM OF THE TRIBUNAL AND SEPARATE MEMORANDUM OF PRESIDING JUDGE CHRISTIANSON

ORDER

On 10 May 1949 a motion was filed in behalf of defendant Ernst Woermann praying that the Tribunal's judgment of 14 April 1949 be amended to revoke its findings of guilt against said defendant on counts one and five of the indictment, and that the defendant be released from custody. On 19 June 1949 the prosecution filed an answering brief to said motion and on 30 June 1949 the defendant filed a rejoinder to the prosecution's answering brief.

It also appears that on 25 April 1949 the defendant joined in a petition for plenary session of the Tribunals for the therein expressed purpose of examining "the judgment passed on 14 April 1949 by the Military Tribunal IV."

The Tribunal having considered said motion and answering brief of the prosecution and the defendant's rejoinder to said answering brief, and being advised in the premises,

IT IS ORDERED that Woermann's motion as to count five be and the same is hereby in all respects denied.

His motion as to count one is sustained; the judgment modified *pro tanto,* and his sentence is modified and reduced from 7 years to 5 years and shall be deemed to have begun 15 October 1945.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

I concur in the above as to count five, but not as to count one. See my separate memo.

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

[Signed] LEON W. POWERS
LEON W. POWERS
Judge

MEMORANDUM

We have carefully reviewed the evidence against Woermann under count one relating to the aggression against Poland on which he was convicted, together with the motions submitted on his behalf.

This review confirms the findings which we made that he had knowledge that Hitler was about to institute an unlawful invasion of Poland, and that there was no legal excuse therefor. We adhere to these findings notwithstanding the fact that Woermann did not attend any of the Hitler conferences where the latter disclosed these plans to his immediate circle of advisors. The conclusion is inevitable, however, that at least by 1 August, the flow of events and the material which crossed Woermann's desk was of such a character that these plans and intent were made clear, although it may well be that he was not informed of the date of the invasion, or of the tactical and strategic plans of the army. Woermann was not dwelling in a vacuum. It is clear, however, that he was not in a position to have prevented the invasion, even had he been inclined so to do. His guilt or innocence, therefore, depends upon whether or not what he did was a substantial cooperation or implementation of the aggressive plans and acts. To say that any action, no matter how slight, which in any way might further the execution of a plan for aggression, is sufficient to warrant a finding of guilt would be to apply a test too strict for practical purposes and the principal *de minimus* must be considered.

After thorough study and reconsideration of the situation, we are convinced, first, that in some respects we did not properly evaluate some of the testimony, and second, that the remaining testimony does not establish his guilt beyond a reasonable doubt. Most of the documents relating to his connection with the aggression against Poland consisted of passing on information and directives prepared and prescribed by von Ribbentrop, and did not involve any affirmative collaboration on Woermann's part. He is entitled to the benefit of doubt, and should be acquitted under count one.

The conviction of the defendant Woermann under count one regarding the aggression against Poland is therefore set aside and he is declared acquitted thereon.

We have reviewed defendant Woermann's motion to set aside his conviction under count five, in connection with our review of the conviction of the defendant von Weizsaecker on that count, and refer to our findings there without here repeating them. The judgment of imprisonment was based on his conviction under count one and count five. In view of the action here taken this judgment of imprisonment must be modified and reduced. It is hereby reduced from 7 years to 5 years to commence from the date mentioned in the judgment, to wit: 15 October 1945.

Judge Christianson dissents from the Tribunal's action in set-

ting aside the defendant Woermann's conviction under count one and his memorandum setting forth his views follows.

SEPARATE MEMORANDUM OF JUDGE CHRISTIANSON WITH RESPECT TO THE ORDER AND RECOMMENDATION THAT THE CONVICTION OF DEFENDANT WOERMANN UNDER COUNT ONE BE SET ASIDE AND HIS SENTENCE REDUCED

I am obliged to differ with my colleagues as to their order and recommendation that the conviction of defendant Woermann under count one, as contained in the original judgment, be set aside and his sentence reduced.

The evidence is such that I am compelled to adhere to the view that prompted me to hold as one of the majority in the original judgment that as to count one, defendant Woermann, because of his activities in the aggression against Poland, was guilty beyond a reasonable doubt. I cannot therefore concur with my colleagues in the recommendation or order that the sentence of Woermann with respect to count one be set aside and his sentence reduced.

[Signed] WILLIAM C. CHRISTIANSON

5. RITTER—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949, the defendant Ritter filed a motion praying that his conviction under counts three and five be quashed and that he be acquitted. Briefs were filed both on behalf of the defense and the prosecution.

It appears that the defendant also joined in a petition for plenary session of the Tribunal for the expressed purpose of "examining the judgment rendered by the Tribunal on 14 April 1949."

The Tribunal having considered the defendant's motions, the briefs and the record, and being advised in the premises,

IT IS ORDERED that his motions be and the same hereby are in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

We have considered the motions filed on behalf of the defendant, Ritter. Our attention has been called to a clerical error in describing Hitler's directive of 4 July. The order provided that notice be served via radio and the press that every enemy aviator shot down while participating in such an attack (i.e., against small localities without war economic or military value) was not entitled to be treated as a prisoner of war, but that he would be killed or treated as a murderer as soon as he fell into German hands. The order continued that nothing was to be done at the moment, but on the contrary, measures of this sort were only to be discussed with the Armed Forces Legal Section and with the Foreign Office.

We have reexamined the defendant's contentions regarding Ritter's responsibility in the matter of the treatment of the so-called terror fliers, and we find no error in the findings and conclusions set forth in the judgment. Von Ribbentrop took an active part in this unlawful plan, and his recommendations were even more unlawful than those which had been proposed, namely to include enemy aviators who engaged in bombing attacks on German cities, a suggestion which was rejected at the conference of 6 June 1944, but there is no evidence that this involved Ritter or that he ever heard of it. The Foreign Office proper became involved in determining how these patent violations of international law could be carried out without informing the world that Germany rejected all doctrines of international law regarding the treatment of prisoners of war. The Foreign Office gave the following advice, saying that to hand the unfortunate aviators over to the SD for special treatment would be tenable only if Germany declared herself free from the obligations imposed by the agreements of international law which were valid and still recognized by Germany, and this the Foreign Office was not prepared to recommend. It suggested an emergency solution of preventing the suspected fliers from ever attaining the status of prisoners of war by telling them that they were regarded not as prisoners of war but as criminals and delivered not to the competent prisoner-of-war authorities but to those competent for the prosecution of criminal acts, to be tried in a summary proceedings, but pointed out that this course would not prevent Germany from being accused of violating existing treaties. The memorandum then stated "It follows from the above the main weight of the action will have to be placed on lynching."

Ritter transmitted this draft to the appropriate army authorities. The recommendation of the Foreign Office that the lynch law be used and obviously encouraged was in fact adopted. In

one camp alone, cases involving the murder of one hundred Allied fliers were tried. The majority of these murders occurred after 15 July 1944.

The contention that the Army High Command objected to these proposals is disposed of by an examination of Keitel's remarks on Warlimont's memorandum of 6 June 1944 (*735–PS, Pros. Ex. 1232*) and by Warlimont's remarks on the Foreign Office draft (*728–PS, Pros. Ex. 1236*).

Consideration of Ritter's motion with respect to the "terror flier" conviction for participation in the plan to murder Allied aviators bailing out over Germany discloses no error, in our judgment and his motions with respect thereto are denied.

The defendant complains that the indictment does not specifically charge him with criminal responsibility for these murders but that under paragraph 28 (c) his name is only mentioned regarding the posting of warning notices prescribing certain "death zones," and that inasmuch as he was acquitted with respect thereto he cannot be convicted in the matter of the Sagan murders.

We reject this contention.

Count three charges that the defendant, with others, participated in atrocities and offenses against prisoners of war and members of the armed forces of nations then at war with the Third Reich; that prisoners of war and belligerents were starved, lynched, and murdered in flagrant violation of the laws and customs of war, and through diplomatic distortions, denials, and fabricated justifications the perpetration of the offenses and atrocities was concealed from the Protective Powers.

Paragraph 28 (c) charges the Sagan murders as being one of the instances involved. While Ritter's name was not specifically mentioned in paragraph 28 (c), in connection with the Sagan murders, this is unnecessary as he was generally charged in the count.

The documents upon which his conviction was based were offered and received long before he was called upon to make his defense. He testified regarding the episode and his connection with it. Both Ritter and Steengracht von Moyland contended that the note on which Ritter and Albrecht collaborated was never sent to Switzerland, the Protective Power. In rebuttal the prosecution offered [*NG–5844, Pros. Ex. C–372*] which contains the two notes sent by the Foreign Office to Switzerland and refers to a preliminary notice of 17 April 1944. There is no substance to the defendant's contention that this exhibit cannot be considered as evidence in his case, or that it was not properly received, or that he had no opportunity to meet it. The Tribunal attempted

to set a deadline in which both prosecution and defense testimony should be concluded. It later became apparent that due to technical difficulties, which neither party could avoid, this was not altogether possible. The Tribunal therefore in a number of cases permitted testimony to be received after the so-called deadline specified. The defendant Ritter was aware of this exhibit and objected to its receipt in evidence. His objection was overruled and no application was made on his part to offer testimony rebuttal. He attached to his motion his affidavit as to this particular document. We have examined it and it contains nothing which leads us to any different conclusion than that expressed in our judgment. An examination of the documents involved in the Sagan incident satisfies us beyond a reasonable doubt that the note to the Swiss Government of 6 June was prepared by Albrecht and Ritter and submitted to von Ribbentrop. Among other things it contains a reference to the prospective funerals of the murdered flyers. Keitel made objection on 4 June 1944 to the inclusion of any such information to the Protective Power. It contains the statements regarding all of these deaths which von Thadden, in his memorandum of 22 June, reports that Albrecht mentioned as being contained in the Swiss note. We find no error in law or fact in our judgment and we deny Ritter's motions to set aside his conviction with respect to the Sagan murders.

6. VEESENMAYER—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949, defendant Veesenmayer, filed a motion praying that the convictions of said defendant under counts five, seven, and eight of the indictment in this case be quashed and that the defendant be acquitted, or alternatively the term of imprisonment imposed upon said defendant by the Tribunal be reduced. On 19 June 1949, the prosecution filed an answering brief in opposition to said motion, and on 27 June 1949 the defendant filed a rejoinder or reply brief to said answering brief of the prosecution.

It appears that the defendant prior to filing of the above motion also joined in a petition for plenary session of the Tribunals for the therein expressed purpose of "examining the judgment" rendered in this case by the Tribunal on 14 April 1949.

The Tribunal having considered the motion of the defendant, the prosecution's answer thereto, and the defendant's reply to the prosecution's answer, and being advised in the premises,

IT IS ORDERED that said motion of defendant be and the same is hereby in all respects denied.

IT IS FURTHER ORDERED that the following paragraph on page 538 of said judgment (English) with respect to the charges against defendant Veesenmayer in count five of the indictment, to wit:

"If, as Veesenmayer now claims, these actions were originated and carried out by Eichmann and Winkler of the SS, it seems most extraordinary that Department Inland II, which at that time was the competent department in the Foreign Office for Jewish affairs, should find it necessary to inform Eichmann, the alleged originator of the planned deportation of Veesenmayer's reports. But such was done."

be and the same is hereby amended, by striking therefrom the name Winkler, and substituting therefor, the name Winklemann.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

It will be noted that reference is made to the fact that the defendant joined in a petition for plenary session of the Tribunals for the purpose of "examining the judgment," etc. Inasmuch as said petition contains arguments with respect to said judgment in behalf of this defendant, it is considered here.

We will now consider the motion of the defendant with respect to the three counts under which he was convicted, namely counts five, seven, and eight.

An examination of the motions on behalf of the defendant and of the record in this case not only confirms but fortifies the findings and conclusions stated in our judgment. Any attempt to excuse or justify his conduct is merely to shut one's eyes to reality. The finding of guilt was compelled by the evidence, and the sentence imposed, when compared with the horror of death and suffering which his program and acts entailed, is moderate. His motions should be and are hereby overruled and denied.

With respect to count seven, the defendant's counsel has argued exhaustively with respect to the interpretation of the evidence, claiming generally that the charges are not in fact sustained by the evidence. This is, in our opinion, erroneous, but such a difference of opinion is understandable. He has reargued the law.

We must and do adhere to the finding made in this count. Errors or discrepancies claimed, do not appear upon examination to constitute warrantable basis for modification of the judgment with respect to this count.

There is no merit in the defendant's motion to set aside his conviction under count eight. His motion to set aside his conviction under this count should be and is hereby overruled and denied.

7. LAMMERS—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949, the defendant Lammers filed a memorandum with respect to alleged errors of law and fact in the judgment herein, under which said Lammers was convicted on counts one, three, five, six, seven, and eight of the indictment.

On 19 June 1949, the prosecution filed an answering brief to said defendant's memorandum, and on 28 June 1949, the defendant filed a rejoinder to said answering brief.

It appears that on 25 April 1949, the defendant joined in a petition for plenary session of the Tribunals, for the therein expressed purpose of "examining the judgment" rendered by the Tribunal on 14 April 1949.

It further appears that on 29 April 1949, the defendant filed with the Military Governor for the U. S. Zone of Germany, a petition therein designated as "Petition for Reopening the Proceedings concerning Dr. Hans-Heinrich Lammers (Case 11)," which petition is referred to, and in effect by reference made a part of the memorandum hereinbefore referred to, which memorandum does not pray for correction of alleged errors complained of, but represents that "There are so very serious and irreparable deficiencies in the proceeding and the judgment, and such critical violations of the generally recognized principles of criminal and procedural law occurred, that the chances offered by the Court to apply for a correction of errors to Military Tribunal IV is not adequate to repair them." Said memorandum then states that, "If the judgment in these proceedings is not to be the act of a powerful and arbitrary victor, but is supposed to administer justice, the only thing that can be done is a reopening of the trial against the defendant Dr. Lammers."

The Tribunal having considered said memorandum and the representations therein contained, and above set forth, and being advised in the premises, and having considered the arguments in

the answering brief, and the reply of the defendant thereto, and being advised in the premises,

IT IS ORDERED that the representations contained in said memorandum as hereinbefore set forth verbatim, be and the same are hereby denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

The petition for plenary session of Tribunals is not before the Tribunal for determination, but insofar as it contains arguments that were made in behalf of this defendant, it is here considered.

The petition to the Military Governor of the U. S. Zone of Germany, and above referred to as having been filed by the defendant, and praying that said proceedings be reopened, is, of course, not within the jurisdiction of this Tribunal. We refer to it here, only because it is by reference in effect made a part of the memorandum which was directed to this Tribunal.

As indicated in the foregoing order the memorandum does not contain a prayer for correction of errors; in fact, the memorandum itself does not specifically allude to any. It does not request that the errors alleged in the petition to the U. S. Military Governor for Germany be corrected. We therefore are not required to here make any corrections. The prayer to the Military Governor of the U. S. Zone of Germany, however, is based upon such palpable misstatements with respect to the conduct of the trial of defendant and the contents of the judgment, that inasmuch as such petition is made a part of the memorandum by reference, we deem it our duty to generally correct the unwarranted representations made therein.

Counsel for the defendant in the course of his petition to the Military Governor, above referred to, has made a series of *exaggerated, false,* and inflammatory statements concerning the judgment, and the majority of the Tribunal rendering such judgment. An example of such statement is the following, contained on page 2 of the said petition to the Military Governor: "I shall prove in the following pages that the Tribunal (with the exception of the dissenting judge) completely ignored the testimony given by

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defense witnesses, did not in a single instance or with a single word discuss them, and probably did not even read them." And again on page 3 of said petition we have the following: "From almost every line of the majority opinion against the defendant Lammers a prejudice of the Tribunal against this defendant must be concluded."

In the course of counsel's arguments contained in said petition to the Military Governor, he relies heavily upon the dissenting opinion for support. It appears that said dissenting opinion is to him *Alpha* and *Omega* in this matter, and from it he repeatedly, and at times at great length, quotes what he deems to be supporting arguments. In view of this, it becomes necessary that we here make some specific references to the unwarrantable conclusions that the dissenting opinion expresses with respect to the majority views, and in which dissenting expressions defense counsel seems to strongly concur. We will here make reference to but a couple of illustrations of many typical unsubstantiated conclusions contained in the dissenting opinion, and from which defendant's counsel takes so much comfort. These indicate in a measure that defense counsel in relying upon the dissenting opinion for support is indeed depending upon an exceedingly infirm crutch.

One of the basic matters in this case, and which the majority, at least, gave a great amount of study, was the question of Lammers' authority and policy-shaping power, and his actual participation in the furthering and carrying out of Hitler's plans and aims. This was referred to at various points in the judgment, and was quite exhaustively discussed in our treatment of count six, of the judgment. We there quoted at considerable length from the defendant's own testimony, given by him when examined by his own counsel in his own behalf. See pages 610–613, inclusive,* of the judgment (English). Defense counsel, in his petition [28 April 1949] to the Military Governor, however, quotes from Judge Powers' dissenting opinion on this phase of the case, at some length. (Pages 9 to 13 of said petition.) We will here quote but a paragraph of such dissenting opinion as same appears near the top of page 12 in said petition [p. 116 et al. of dissenting opinion]:

> "In my judgment, he cannot properly be held guilty of a crime on the basis of his having prepared and signed with Hitler, Fuehrer decrees. *His relationship to those decrees and responsibility for them, was not substantially different in principle than that of the stenographer who typed them.* They

* Page numbers cited herein, refer to mimeographed record of judgment and petitions.

were not his decrees, they were Hitler's, and he could not be said to have had a criminal intent in preparing them, even in cases where they required for their execution the commission of a crime." [Emphasis supplied.]

The petition (on top of page 13 thereof) then states at the end of the lengthy quotation from the dissenting opinion from which the above excerpt was taken: "The findings in the majority opinion are already refuted by dint of this dissenting opinion," and then at the bottom of that page, counsel again states: "The fact, which has been again and again emphasized by the defense, that the cosignature of the defendant was merely of an authenticating and certifying nature was completely ignored by the majority opinion." He then proceeds to "*prove*" this point by alluding to [NG–1230] Prosecution Exhibit 426, a Fuehrer decree of 1 April 1944, and he quotes therefrom as to the powers of the Reich Minister and the Chief of the Reich Chancellery. A careful perusal of such document, and a consideration of the evidence of defendant's own giving, shows that this argument of the defense counsel is entirely a wishful assumption. What power and authority Lammers actually exercised is the important thing here. In this connection let us refer to parts of the testimony given by defendant himself, to wit, a portion of his examination as appears on page 610 of the judgment (English):

"A. * * * I *was responsible for seeing to it that the Fuehrer's wishes* were *properly* and *suitably formulated*, and, secondly, I had to see to it that as far as the contents of the law went, the ministers concerned had been heard." [Emphasis supplied.]

It would seem that it would occur to the author of the dissenting opinion and to the counsel for the defendant that such powers are a bit unusual for one whose powers they would liken to those of a "stenographer." We submit that it does not matter much what you call defendant under such circumstances. He is an active participant in the crimes of the one whose "wishes" as to such crimes he saw to, to use his own words, "were properly and suitably formulated." The foregoing is but a small portion of the evidence heard from the lips of the defendant himself, and which the writer of the dissent heard, or should have heard, as he was present when it was given by the defendant. We do not propose to comment on this phase of the matter further, except to observe that it is characteristic of the assurance with which unsubstantiated conclusions are stated throughout the dissenting opinion, and the manner in which they are sought to be fortified by the use of utterly inapplicable metaphors and similes. We take the

liberty to refer to one more statement in the dissenting opinion which is likewise illustrative. We refer to a quoted statement from such dissent, appearing on page 93* of the petition to the Military Governor, where the petition states:

> "Judge Powers made the following commentary on this:
>
> " 'The opinion states that Lammers cooperated with the program of spoliation. What is meant by such a statement is not clear. People on a highway who hastily vacate the road to make way for a speeding bandit on his way to rob a bank are cooperating with the bandit. But one would hardly say that they are guilty of robbing a bank'."

We wish to remind counsel that *affirmative acts* of participation and cooperation by this defendant were shown in the furtherance and carrying out of the spoliation program. It is nothing short of ridiculous to compare the *passive acts* of people on a highway getting out of the way of a bandit, to the situation of the defendant with respect to the program of spoliation, as revealed by the evidence.

The assertions made by the defendant himself in the course of testifying before the tribunal, and the arguments heretofore made by counsel, would indicate that in their view only Hitler could be responsible for all the crimes of the Nazi regime; that no one, despite his active participation in perfecting and carrying into effect the plans and aims of Hitler, would be guilty also, because such participant and collaborator did not have the right of ultimate decision in the matter—such right of decision resting with Hitler. We need not comment on such a view.

With respect to the contention of counsel that the proceedings were not fair, and that the defendant was discriminated against, and that the Tribunal was prejudiced against defendant, we wish to make a few brief observations.

Defendant was charged under all the counts of the indictment. He had throughout the trial an able and exceedingly diligent counsel. Although the prosecution completed the presentation of its case in March 1948, this particular defendant by reason of his position as fixed for the order of presenting the defendants' cases did not have to commence the presentation of his defense until early September 1948, when he took the stand in his own behalf and spent approximately 12 days in presenting his case in chief. Following this there was a rather lengthy cross-examination, after which the defendant testified on redirect examination by his own counsel. In the course of his examination the defendant was given great latitude, although the Tribunal did endeavor to keep

* See page 118 of mimeographed dissenting opinion.

the defendant on factual evidence, when he again and again sought to argue the law from the witness stand. He was repeatedly told that the law could be later argued by his counsel. With respect to documentary evidence, the Tribunal gave to this and other defendants all possible assistance in order that they might examine old Reich records under the control of American and British authorities. Any intimation to the contrary is not true. A vast mass of documentary material, much of it cumulative and not of much probative value, was introduced by the defendant in his behalf, and contrary to what defense counsel now asserts very boldly, the majority of the Tribunal spent a great deal of time and effort in sifting this evidence and studying same. The fact that after such examination, it was determined that it did not constitute valid and persuasive refutation of the many affirmative acts of participation and collaboration of defendant in the crimes charged, and for that reason may not have been given space for specific discussion in the judgment, is certainly not evidence of a failure to consider defense material, but that after evaluation it was not deemed sufficient to rebut the evidence of affirmative collaboration.

That the Tribunal accorded to this defense counsel all assistance it could give him with respect to the examination and procurement of defense evidence in the document center in Berlin is apparent from the fact that as early as 26 February 1948, the Tribunal made an order in favor of this defendant for that purpose, and again on 17 June 1948 it made another order at the behest of defendant's counsel authorizing one Mr. Fritz Kunze to examine and study documents in the Document Center in Berlin in connection with the preparation of the defense of defendant Lammers.

The defense counsel complains that some of the defense witnesses were required to give their testimony before commissions appointed by the Tribunal. It should be noted here that such testimony went into, and became a part of, the Official Record transcript of the Tribunal, and was part of the evidence in the case which was considered by the Tribunal, and which was the subject of argument and briefs of counsel on both sides before the rendition or preparation of the judgment in this case.

In this connection, we wish to make some things clear with respect to the taking of evidence before commissions in this case, and in that connection it should be remembered that the Tribunal was, under the provisions of the law and ordinances under which it operated, under positive duty to conduct as expeditious a trial as possible, consistent with fairness.

Article V (*e*) of Ordinance No. 7, in defining the powers of the

Military Tribunals, states that among such powers is the power "to appoint officers for the carrying out of any task designated by the Tribunals *including the taking of evidence on commission.*" [Emphasis supplied.]

It appears that the Charter annexed to the London Agreement, and also made an integral part of Control Council Law No. 10, contains a similar provision—Article 17 (*e*). It appears that the taking of evidence before commissions was extensively employed during the IMT proceedings.

The contention of defense counsel that such procedure was prejudicial to his client is absolutely without merit. In this connection we wish to call attention to statements made by this Tribunal in a memorandum attached to an order made by the Tribunal with reference to objections then made with respect to such procedure. Such order and memorandum are dated 17 August 1948 and filed in the Court Archives at Nuernberg on 19 August 1948, and there given Document No. 921. For convenience of everyone concerned, however, we quote from such memorandum, as same contains an adequate answer to the contentions of defense counsel with respect to unfairness and prejudice. We quote (pp. 474–475, Order and Judgment Book) :

MEMORANDUM

* * * * * * *

"In making this order, the Tribunal desires to reiterate that it is under a duty to conduct these proceedings as expeditiously as is possible and consistent with fairness to all parties concerned. It wishes to emphasize, however, that, although the order here in question was made to facilitate the trial, such order would not have been made if the Tribunal had not been satisfied, beyond a shadow of a doubt, that no prejudice would result to the defendants therefrom.

"Article V, paragraph (*e*) of Ordinance 7, in defining the powers of the Military Tribunals, states that they shall have the power 'to appoint officers for the carrying out of any task designated by the Tribunals including the taking of evidence on commission.' The Charter also contains a similar provision, and it appears that the taking of evidence before commissions was extensively employed during the IMT proceedings.

"The contention of some of the defendants that they are being discriminated against by the order in question, because commissions were scarcely used during the presentation of the prosecution's case, is clearly without merit. This becomes clear to anyone who considers the conditions prevailing in this case. The case has been in progress for over seven months. At the

close of the prosecution's case, the Transcript record of evidence taken before the Tribunal was exceedingly voluminous and, in addition thereto, thousands of exhibits had been received in evidence. For over three and a half months since the close of the prosecution's case, the defendants have been engaged in presenting respective cases. The record which, as above indicated, was exceedingly voluminous at the commencement of the defendants' cases, has been greatly lengthened during the three and a half months of their presentation, and hundreds of additional exhibits have been introduced in their behalf. Several more weeks will be required to complete the taking of evidence. When all the evidence to be introduced has been received, and the case is finally submitted to the Tribunal, the Tribunal will have before it for consideration a transcript record of stupendous proportions and several thousand exhibits, altogether comprising such a voluminous record as is rarely submitted to a Tribunal.

"The members of the Tribunal feel that they are endowed with fairly good memories; they realize, however, that it would be sheer foolhardiness for them to make a decision upon the evidence introduced before the Tribunal by the prosecution, in the light of the impressions retained in their memories from the times several months ago, when hundreds of items of evidence were introduced. The Tribunal must, under such circumstances, rely upon the record transcript of evidence and the exhibits introduced, in giving final consideration to such evidence. Inasmuch as the Tribunal must and will do this with respect to the prosecution's evidence, similar treatment of the defendants' evidence surely will result in no discrimination against the defendants. The fact that the transcript record in one instance is made up of evidence which was partly received before commissions and partly before the Tribunal itself makes no real difference between the records of the prosecution and the defense, for the record coming partly through the commissions is as correct with respect to competency and relevancy as is the record made from evidence which was introduced almost entirely before the Tribunal, for the Tribunal has final decision on questions of admissibility of evidence offered before the commission.

"Therefore, when the record is finally submitted to the Tribunal, so much thereof as comprises the record of the defendants' cases will, for all practical purposes, represent as clearly and completely all evidence taken in their behalf as will the record of the prosecution represent the evidence in its case.

From the records thus made, it will be possible for both sides to thoroughly argue and brief the evidence for the Tribunal.

"In the light of these considerations, the Tribunal is of the opinion that the objections urged against the order of 23 July 1948 are without merit, and therefore the motion of defendants to rescind such order is denied. 17 August 1948. WCC"

Subsequent events have given emphasis to the statements made in the foregoing memorandum, for upon completion of the case the transcript record (exclusive of the judgment) comprised 28,085 pages, and there were in evidence a total of 9,067 documentary exhibits.

It must also be remembered that practically all of the oral evidence was offered in the first instance in the German language, which required translation. The value of inflections, emphasis, etc., on the part of the witness is therefore almost entirely lost on hearers who do not understand the German language and must rely on translation. This, of course, is as true of prosecution as defense witnesses.

We believe that the observations we have in the foregoing memorandum made with respect to the arguments and claims of defense counsel that his client did not have a fair trial by an unbiased Tribunal indicate the untenability of his contentions.

8. STUCKART—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 6 May 1949 a memorandum was filed in behalf of defendant Stuckart relative to alleged errors in the Tribunal's judgment in this case, in which judgment said defendant was convicted under counts five, six, and eight of the indictment. Said memorandum contained a prayer that said judgment be amended to adjudge said defendant not guilty under said counts. On 19 June 1949, the prosecution filed an answering brief to said memorandum, and on 28 June 1949, the defendant filed a rejoinder to said answering brief of the prosecution.

It appears that prior to the filing of the above memorandum the defendant joined in a petition for plenary session of the Tribunals, for the therein expressed purpose of "examining the judgment passed on 14 April 1949 by the Military Tribunal IV."

The Tribunal having considered said memorandum and the motion therein contained, the answering brief of the prosecution and the defendant's rejoinder thereto, and being advised in the premises,

IT IS ORDERED that the defendant's prayer for relief as contained in said memorandum be and the same is hereby in all respects denied.

Memorandum hereto attached is hereby made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

It will be noted that reference is hereinbefore made to the fact that the defendant joined in a petition for plenary session of the Tribunals, which petition could not be entertained by this Tribunal. The Tribunal, however, insofar as said petition contains arguments challenging the convictions in said judgment, has taken cognizance thereof in its consideration of the memorandum here for determination.

We will now consider the three counts under which defendant was convicted.

We have reviewed the evidence regarding Stuckart in connection with count five, under which he was convicted, and his motions to set aside this conviction. We do not find any errors or discrepancies of such materiality that would justify the Tribunal in amending the judgment in respect thereto. The record amply establishes beyond doubt Stuckart's participation in the crimes for which he was convicted under count five. His motion should be, and hereby is, overruled and denied.

With respect to count six, an examination of the arguments contained in said memorandum with respect to same does not convince the Tribunal that there are any errors or discrepancies of such materiality or substance so as to justify the Tribunal in amending said judgment with respect thereto. Here there are apparent great differences of opinion between the Tribunal and defense counsel as to the proper interpretation of the evidence. The Tribunal adheres to its findings on the basis of the evidence submitted with respect to said count.

A review of the evidence in view of the motions filed to set aside Stuckart's conviction under count eight discloses no error in fact or law. We adhere to the findings and conclusions expressed in our judgment relating thereto. His motion to set aside his conviction under count eight should be and hereby is overruled and denied.

9. DARRÉ—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 6 May 1949 defendant Richard Walter Darré, through his counsel Dr. Hans Merkel, filed a motion for amendment of the judgment in this case, on the ground of alleged errors therein, the defendant Darré having been convicted therein under counts five, six, and eight of the indictment. On 25 April 1949 said defendant's counsel also joined in a motion for plenary session of the Tribunal's, "in order to examine the judgment passed on 14 April 1949." On 16 June 1949 the prosecution filed answering briefs to said motion of 6 May 1949, and on 21 June 1949 defendant Darré's counsel filed a reply brief.

The Tribunal having considered the motion of defendant, the answer thereto of the prosecution, and the defendant's reply to said answer, and being fully advised in the premises,

IT IS ORDERED that defendant's motion of 6 May 1940 be, and the same is, hereby in all respects denied.

Memorandum hereto attached is made a part hereof.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

With respect to count five, we have reviewed the motions and reread the testimony. The participation of Darré in the resettlement program is perfectly clear, and no legal or moral justification is suggested. The defendant contends that Exhibit 1315 [NG-1645], Book 72B, was rejected by the Tribunal, but was considered by it in its opinion as one of the bases of guilt. The contemporaneous record made by the Tribunal indicates that when first offered it was not received, but later was accepted. We do not have present access to the Secretary General's Official Record regarding this exhibit, but if we were to assume that through error it was referred to in the opinion, it can be wholly omitted without in anywise changing the findings of fact and conclusions which the Tribunal drew as to Darré's guilt. His motion respecting count five should be, and is, hereby denied.

With respect to count six of the indictment, and under which defendant was found guilty of spoliation of the agricultural resources of Poland, etc., it is to be observed that defendant's contention is largely that he lacked authority or competency to do the things with which he was charged, and that some of the charges made do not cover the period during which he in fact was Minister of Agriculture. These are substantially repetitions of the defense made during the trial, and arguments thereafter. They are in effect no more than a reargument of what was once before argued, and presented before the Tribunal, which arguments and defense were considered by the Tribunal in the rendering of its finding of guilt against defendant Darré under count six.

As has been heretofore and elsewhere indicated by the Tribunal, it takes no cognizance of the request for plenary session, but it has herein considered the arguments therein advanced to challenge the findings of the Tribunal.

10. DIETRICH—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 5 May 1949 a motion was filed in behalf of defendant Dietrich praying that the Tribunal's judgment of 14 April 1949 be amended to revoke its findings of guilt against said defendant on counts five and eight of the indictment and that the defendant be released from custody. On 19 June 1949 the prosecution filed an answering brief to said motion and on 30 June 1949 the defendant filed a rejoinder to the prosecution's answering brief.

It also appears that on 25 April 1949 the defendant joined in a petition for plenary session of the Tribunal for the purpose of "examining the judgment passed on 14 April 1949 by the Military Tribunal IV." The Tribunal having considered said motion and answering brief of the prosecution and the defendant's rejoinder to said answering brief and being fully advised,

IT IS ORDERED that Dietrich's motion as to counts five and eight be, and the same is, hereby in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

The questions raised by the motion of defendant Dietrich were considered in our opinion. They have been reexamined in connection with his motion and we find no error and no reason why we should not adhere to our findings and conclusions. His motion should be, and hereby is, overruled and denied *in toto*.

11. BERGER—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 6 May 1949 counsel for defendant Gottlob Berger filed a memorandum, dated 4 May 1949, calling the Tribunal's attention to alleged errors in the judgment in this case, in which judgment said defendant had been adjudged guilty under counts three, five, seven, and eight of the indictment. It appears that prior to the filing of the above memorandum defendant had joined in a petition for plenary session of the Tribunals for the therein expressed purpose of "examining the judgment" passed on 14 April 1949 by this Tribunal. It further appears that on 29 April 1949 a petition was filed by defendant with the Military Governor for the U. S. Zone of Germany, praying that (1) said judgment be vacated, or (2) that the sentence of Berger be reduced to a lesser period of confinement.

On 19 June 1949 the prosecution filed with the Secretary General an answering brief relative to the defense memorandum and motion concerning alleged errors in the judgment, and on 28 June 1949 a reply brief to the answering brief of the prosecution was filed in behalf of defendant Berger, praying that upon his motion of 4 May 1949, in conjunction with his brief of 28 April (plea to the Military Governor above referred to), the adjudication of guilt on the counts involved be revoked or the sentence reduced.

The Tribunal having considered the memorandum and motion of the defendant, and the arguments in support thereof, including those contained in the plea to the U. S. Military Governor of Germany as referred to in connection with defendant's memorandum and motion of 4 May 1949, and having considered the answering brief of the prosecution and the reply of defendant thereto, and being advised in the premises,

IT IS ORDERED, that the prayer for relief as contained in the defendant's memorandum of 4 May 1949 and in his reply brief of 25 June 1949 be, and the same is, hereby in all respects denied.

Memorandum hereto attached is made a part of this order.
Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

Defendant devotes considerable space in his memorandum to a listing of various items of both oral and documentary evidence introduced in his client's behalf, and which evidence he states (see page 10 of his memorandum) is "evidence that was not taken into consideration." Apparently counsel draws such conclusion from the fact that such evidence is not specifically referred to or commented upon in the opinion, which may well have been due to the fact that such items of evidence did not in the opinion of the Tribunal possess the value that counsel accords to it. Failure to specifically discuss such items of evidence cannot justifiably be taken to mean lack of consideration. On the contrary the thought and consideration given it may have impelled the Tribunal to its decision not to take up time and space in discussion of such evidence. To have exhaustively discussed all evidence, item by item, would unnecessarily have extended an already long judgment to unwarrantable lengths.

We will now discuss some of the alleged errors as they relate to the various counts of the indictment under which defendant was found guilty.

We have examined the defendant's motions relating to counts three and five, reread the record regarding the Mesny murder incident, and find no substance to the contentions therein contained. We may state that Meurer, when on the witness stand, testified on direct examination that when the intelligence officer drew attention to the fact that the name of the French general first selected to be murdered had been sent over open teletype, and thus secrecy imperilled, he, Meurer, immediately reported the matter to General Berger, who saw the point of these misgivings and approved Meurer's suggestion that Field Marshal Keitel should be informed of the situation. Meurer states that on the same day, he sent off a teletype letter to Marshal Keitel roughly to the effect that the use of open teletype endangered secrecy, and to put it to him to choose somebody else. Berger's motions regarding count three and count five should be and are hereby overruled and denied.

The arguments advanced by the defendant against the finding of guilt under count seven, generally stated, are to the effect that such finding is not adequately sustained by the evidence, and in connection therewith several claimed errors are specifically referred to.

In his memorandum of May 4, defense counsel for Berger points out, on page 9 thereof, three claimed errors in the Tribunal's treatment of count seven, one such error being numbered 25 and appearing on page 767 of the judgment; error numbered 26, appearing on page 770 of the judgment; and error numbered 27, also appearing on page 770 of the judgment. We will briefly comment on such claimed errors. The first of these claimed errors (No. 25) is based on the fact that the judgment states on page 767 thereof that "the evidence indicates that this youth conscription program was in the main compulsory, although defendant denies this." Defense counsel contends that the prosecution failed to sustain such charge, "The only evidence submitted, [NO–1819] Exhibit 2648, says: Hauptsturmfuehrer Brandenburg requests that, if at all possible, no pressure be used." Brandenburg was Berger's deputy or representative at the meeting where the foregoing statement was made. Counsel then refers to pages 83–86 of his petition to the Military Governor. We have examined again the evidence on this point. In the light of the evidence it appears entirely untenable for defendant to contend that the only evidence submitted was what he above refers to. It is only necessary to allude to specific evidence on this question as contained on pages 766 to 769, inclusive, in the judgment. Document Book 68 of the prosecution contains further evidence thereon. Further, the argument that Berger did not initiate the Heu-Aktion or the Luftwaffe helpers campaign, nor did he carry on these programs, as also contended in the defendant's petition to the Military Governor, is scarcely worthy of passing notice, in view of the various exhibits introduced in evidence, which clearly establish the defendant's close connection with the carrying out of such programs. We refer to [NO–1877 and NO–2016] Prosecution Exhibits 3387 and 3388, in Prosecution [Document] Book 68, which exhibits are only two of several, on this subject.

Alleged errors, numbers 26 and 27, may be discussed together, they referring to the same program, and both appearing on page 770 of the judgment. The program in question was one that contemplated among other things evacuation of Ukrainians from the Ukraine for conscription to labor. Reference to such program is made on page 769 of the judgment, which recites the order issued by Himmler (June 1943) and received by Berger. It is contended by counsel for the defendant that the Tribunal was

not justified in stating with respect to such matter that: "The testimony of Berger was to the effect that he was not in favor of such an announced program and that, in fact, the mass evacuation provided for in Himmler's order was not carried out. In view of convincing evidence to the contrary, however, the Tribunal is obliged to reject the explanation and defense thus given by Berger."

Counsel then states in connection with the above: "The evidence does not contain such evidence to the contrary" and he refers to the brief submitted by him to the Military Governor, page 94 thereof.

Error 27 as alleged, also referring to the matter of the Ukrainians, is based on the fact above that the Tribunal cited the evidence of defense witness Braeutigam (page 770 of the judgment), to show that there had been by the fall of 1943 many Ukrainians evacuated from the Ukraine, such witness having stated: "* * * as is well known, in the autumn of 1943 the Ukrainians had already been evacuated to a large extent." The defense counsel (page 9 of his memorandum) quotes the testimony of such witness as follows, with the comment indicated: "* * * as is well known, in the autumn of 1943 the Ukraine had already been evacuated to a large extent, [that is, the troops had to withdraw from the Ukraine"]. The words in brackets are the comment of counsel. Reference is made to the transcript of such evidence as being on page 6629 of the German Transcript and page 6575 of the English Transcript.

After having discussed Berger's activities and participation in the youth conscription programs, the Tribunal stated on page 769 of the judgment: "The evidence with respect to slave labor indicates the further involvement of Berger in the slave-labor program." The judgment then goes on, pages 769–771, to discuss the evidence of further involvement. Then on page 770 of the judgment, after calling attention to the fact that Berger had received (June 1943) "a so-called top secret order from Himmler with respect to a program of enslavement of the male population of the north Ukraine and central Russia" (pages 769–770) "and that in fact the mass evacuation provided for in Himmler's order was not carried out. In view of the convincing evidence to the contrary, however, the Tribunal is obliged to reject the explanation and defense thus given by Berger."

We believe from the evidence we are not justified in making any alteration or modification in the judgment on these contentions of defense counsel. To say that "there is not evidence to the contrary" as defense counsel here states is merely rhetorical argument. Attention was called in the judgment to the letter of

Berger, written by him 14 July 1943 to Himmler, discussing the labor program, and there he states in part to Himmler as follows: "I would suggest that after the termination of the actions in central Russia and north Ukraine, a strong action for labor conscription in Lithuania is initiated." With respect to claimed error 27, to contend that the testimony of Braeutigam establishes that the mass evacuation ordered by Himmler was not carried out, is likewise untenable. The transcript record states that Braeutigam testified: "* * * as is well known, in the autumn of 1943 the *Ukrainians* had already been evacuated to a large extent." [Emphasis supplied.] Counsel quotes such testimony as being "* * * the *Ukraine* had already been evacuated to a large extent" [emphasis supplied], and then goes on to explain that evacuation of the Ukraine, meant that the German soldiers had been obliged to withdraw from the Ukraine. This is an unwarranted assumption, and is based on an incorrect translation of Braeutigam's testimony [*Tr. p. 6575*], for the unchallenged transcript record states that the *Ukrainians* had been largely evacuated in the autumn of 1943, instead of the Ukraine. Even if the witness had used the term Ukraine, small justification exists for the interpretation here given by the defense counsel to the effect that this meant evacuation of German soldiers, and not Ukrainians.

Furthermore, the Tribunal in its judgment (page 770) refers to reports showing the carrying out of such evacuation program. The exhibits are not specifically referred to in the judgment, but we will note some of them here: Prosecution Exhibits 3344, 3345, and 3346 [NO–2007, NO–2008, NO–2009], all in Prosecution Document Book 68. There are also others. The fact that it is claimed in counsel's brief that Berger did not see these reports, even if that were true, does not detract from the value of these reports in proving that an evacuation program was going on during the times in question, and that the Ukrainian people were the unwilling victims.

The Tribunal does not find in the contention of counsel, as shown in his memorandum or in his petition to the Military Governor, proper and adequate basis for the modification of its judgment with respect to its findings against defendant Berger under count seven.

12. SCHELLENBERG—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 26 May 1949, a motion was filed in behalf of defendant Schellenberg praying that the Tribunal's judgment of 14 April

1949 be amended to revoke its findings of guilt against said defendant on counts five and eight of the indictment, and that the defendant be released from custody. On 19 June 1949 the prosecution filed an answering brief to said motion and on 30 June 1949 the defendant filed a rejoinder to the prosecution's answering brief.

It also appears that on 25 April 1949 the defendant joined in a petition for plenary session of the Tribunal for the purpose of "examining the judgment passed on 14 April 1949 by the Military Tribunal IV." The Tribunal having considered said motion and answering brief of the prosecution and the defendant's rejoinder to said answering brief and being fully advised,

IT IS ORDERED that Schellenberg's motion as to counts five and eight be, and the same is, hereby in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

The questions raised by the motion of defendant Schellenberg were considered in our opinion. They have been reexamined in connection with his motion and we find no error and no reason why we should not adhere to our findings and conclusions. His motion should be and hereby is overruled and denied *in toto*.

13. SCHWERIN VON KROSIGK—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949 defendant Schwerin von Krosigk filed a motion for amendment of the judgment in this case with respect to counts five and six, under which said defendant was convicted, calling attention herein to alleged errors of law and fact. On 19 June 1949 the prosecution filed an answering brief to said motion and on 30 June 1949 the defendant filed a rejoinder to the prosecution's answering brief. It also appears that on 25 April 1949 this defendant joined with others in a petition for a plenary session of the Tribunals for the therein expressed purpose of "examining the judgment passed on 14 April 1949" by the Tribunal in this case.

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The Tribunal having considered the motion for amendment, the answering brief in opposition thereto, and the defendant's rejoinder or reply to the prosecution's answering brief, and being advised in the premises,

IT IS ORDERED that said motion for amendment be, and the same is, hereby in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

The petition for plenary session hereinbefore referred to as having been joined in by the defendant could not be entertained or determined by the Tribunal, but inasmuch as said petition contains arguments in behalf of defendant, said arguments have been given consideration in connection with the determination of the defendant's motion herein.

We have considered the motion on behalf of the defendant Schwerin von Krosigk. Our attention is called to the statement in the judgment that the defendant was present at the conference in the Ministry of the Interior which resulted in the issuance of the Eleventh Supplementary Decree to the Reich Citizenship Law. An examination of this document reveals that the defendant himself was not present but that the decree was signed on his behalf by one of his deputies.

Complaint is further made that the Terboven decree regarding the Jews in Norway did not mention Jews of Norwegian birth or Norwegian citizenship. This is true. The decree referred to Jews in Norway who had lost their citizenship in accordance with the Eleventh Supplementary Decree to the Reich Citizenship Law and also applied to stateless Jews who in the past were German citizens, and who usually resided abroad or were about to do so.

It therefore applied to Jews living in Norway who were no longer German citizens.

While the language of the opinion could have been more precise, it was substantially accurate. No justification was offered for the confiscation of the property of either class and there was none.

The intimate connection which the defendant's Ministry of Finance had in the confiscation and realization of Jewish property seized in occupied countries is amply described in [Pros.] Exhibit

3920, Book 212, page 153 [NG–5369], which is the minutes of a conference held in the Ministry of Finance on 11 and 12 December 1942. The measures therein described and proposed are by no means limited to Jews of German nationality, notwithstanding the assertions made by the defendant—a fact, however, which we do not deem to be controlling. There can be no question that the funds thus realized from confiscated property were, and were intended to be, used in carrying on German wars of aggression, nor can there be any doubt of the fate of the vast majority of the Jews thus robbed. Arrest, imprisonment in concentration camps, theft, and death were all essential parts of the same horrible scheme.

After careful examination of the record relating to the defendant's connection with the crimes charged in count five of the indictment, we are of the opinion that no error in fact or law was committed. The defendant was too intimately and actively connected with the offenses described in this count of the indictment to escape criminal responsibility. There is an additional incident not mentioned in our discussion of his case, namely, his connection with the so-called Melmer deposits of the Reich Bank, which were the proceeds of the loot of the concentration camps. The Reich Bank's internal memorandum of 31 March 1944 [PS–3947] (Exhibit 1914, Book 151, page 94) reads in part as follows:

> "According to the oral confidential agreement between vice president, Mr. Puhl, and the chief of one of Berlin's public offices, the Reich Bank took over the selling of local and foreign currency, gold and silver coins, precious metals, securities, jewels, watches, diamonds, and other precious objects. * * * The Reich Marshal of the Greater German Reich, the deputy for the Four Year Plan informed the German Reich Bank, 19 March 1944, a copy of which is enclosed, that considerable amounts of gold and silver objects, jewels, etc., at the main office of the Board of Trustees East should be delivered to the Reich Bank according to the order issued by the Minister of the Reich Funk, Graf Schwerin von Krosigk. The utilization of these objects should be accomplished in the same way as the Melmer deliveries."

The acts with which the defendant Schwerin von Krosigk was connected, which occurred prior to 1 September 1939, which we recited, were considered only insofar as they had connection with or were in furtherance or aid of Hitler's plans for aggressive war. All were a part of the execution of those plans. The confiscation of Jewish property, as the record clearly demonstrates, was important and at times almost an essential part of prepara-

tions for war. These confiscations were without legal or moral justification as the defendant himself admits.

In sustaining the motion to dismiss count four of the indictment, the Tribunal held that crimes committed by the Nazi government against German nationals prior to 1 September 1939 were not *per se* crimes under international law, but we made clear throughout the trial that if any of these crimes were pursuant to or in execution of Hitler's plans to commit crimes against peace it came within our jurisdiction even though committed prior to 1 September 1939. The defendant's guilt under count five was amply and overwhelmingly established. His motions to set aside the judgment of convictions should be, and hereby are, overruled.

The defendant's counsel has argued very earnestly that the conviction under count six is not in fact sustained by the evidence. For the most part such contention is based upon an interpretation of the evidence by the said defendant's counsel most favorable to his client, and in which interpretation it appears the Tribunal is in disagreement with counsel in many respects.

It must be noted that the defense counsel contends that the spoliation charges against defendant with respect to Poland are not sustained, and he contends that such conviction cannot be upheld because one particular exhibit cited in the judgment makes reference to Russian territory and not to Polish territory, the exhibit in question being Prosecution Exhibit 1062 [NI–440] commencing on page 723 of the judgment.

Even if the contention of the defense counsel to the effect that this document referred exclusively to Russia were true, it is too much to contend that the conviction under this count would not be amply sustained without it. To the evidence specifically referred to in the judgment, as well as considerable evidence not in fact specifically referred to but introduced in the record, in the words of the judgment, demonstrate that this defendant was "a participant in the formulation, implementation, and furtherance of the Reich's spoliation program as it dealt with Poland" and "is criminally responsible therefor." With respect to said Exhibit 1062, however, the emphatic and confident assertion of the defendant's counsel that said exhibit refers only to Russian territory is not justified. It is true that there are references there to specific Russian cities, etc., but repeatedly throughout said exhibit the references indicate that the subject under discussion is "the Occupied Eastern Territories" which well might include Polish territory. Nowhere in the document does it specifically indicate that Russian territory is the only territory contemplated within the term "Occupied Eastern Territories." We must adhere to our finding of guilt with respect to this count.

14. PUHL—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949, a motion was filed in behalf of defendant Puhl praying that the Tribunal's judgment of 14 April 1949 be amended to revoke its findings of guilt against said defendant on count five of the indictment and that the defendant be released from custody. On 19 June 1949 the prosecution filed an answering brief to said motion and on 30 June 1949 the defendant filed a rejoinder to the prosecution's answering brief.

It also appears that on 25 April 1949 the defendant joined in a petition for plenary session of the Tribunals for the purpose of examining "the judgment passed on 14 April 1949 by Military Tribunal IV."

The Tribunal having considered said motion and answering brief of the prosecution and the defendant's rejoinder to said answering brief, and being fully advised,

IT IS ORDERED that Puhl's motion as to count five be and the same is hereby in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

Our attention is called to the statement in our opinion that Puhl was appointed Funk's deputy on 11 February 1939, in charge of the active affairs of the Reich Bank. Through clerical error we referred to the date shown in Exhibit 1903 rather than the actual date of 12 June 1940 shown in Exhibit 1904, although there is in the record a letter from Funk to Lammers stating that Puhl had been acting in that capacity since 1939. The date, however, when he officially became deputy for Funk is immaterial, as the acts upon which he was convicted occurred several years later.

The defendant, in his motion, complains that the Tribunal relied upon the affidavits of Thoms and Wilhelm and overlooked that on cross-examination these witnesses modified or repudiated important portions thereof. We have examined these contentions and

have reread their testimony, both direct and cross, which fortifies the conclusions which we expressed in the opinion. Any modifications which were made are not substantial and do not materially effect the force of the statements given in the respective affidavits. Puhl himself confirmed Thoms' statement that the transactions regarding the so-called Melmer deposits were to be kept secret and confidential. (*Tr. p. 5836.*)

We were not in error in stating that the defendant contended that the theft of personal property of Jews and other concentration camp inmates is not a crime against humanity. His counsel, on final argument (*Tr. p. 27131*), asserted "that the acceptance of gold assets and other currency delivered by the SS cannot be considered a crime against humanity *because this act was directed exclusively against property.*" [Emphasis supplied.]

If our statement regarding the amount of gold and silver melted down from the loot of the concentration camps is erroneous it must be one of translation—the figures are taken from the English document book. We have no present facilities for examining the original. But assuming that the translation of this particular document is erroneous, the fact still remains that a vast amount of loot of this character was delivered to the Reich Bank by the SS Organization, that it came from concentration camp inmates and much of it from the bodies of the murdered. Puhl made the arrangements for the receipt thereof, gave instructions to the proper subordinates of the bank, and we are convinced beyond question he knew the nature of the transactions and the source from which the gold, silver, jewelry, gold teeth, watches, spectacle cases, and the like came. His motions should be, and are, overruled.

15. RASCHE—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

Defendant Rasche, on 10 May 1949, filed a motion praying that the judgment in this case be amended and that the finding of "guilty against the defendant Karl Rasche under count six of the indictment for 'participation in the exploitation of Bohemia, Moravia, as well as the Netherlands' and under count eight 'for membership in the SS' be repealed." On 16 June 1949 the prosecution filed an answer to said motion, and on 30 June 1949 the defendant filed a rejoinder to said answer of the prosecution. It further appears that on 25 April 1949 the defendant joined in a petition for plenary session of the Tribunal, for the purpose of examining "the judgment passed on 14 April 1949 by Military Tribunal IV in Case 11."

The Tribunal having considered the motion of defendant, the answer thereto of the prosecution, the defendant's rejoinder to said answer, the argument contained in petition for plenary session insofar as pertinent herein, and being advised in the premises,

IT IS ORDERED that defendant Rasche's said motion be, and the same is, hereby in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

With respect to count six, defendant has to a great extent reargued the facts and law, which were by him argued prior to the preparation and rendition of the judgment. He now argues that the Tribunal has in many respects wrongly interpreted the evidence and incorrectly construed the applicable law. He has also sought to add considerable evidence by appending to his motion a considerable number of affidavits, and other documentary evidence, all prepared and dated subsequent to the rendition of the judgment. Obviously these cannot now be considered.

It does not appear that the defendant has called our attention to such errors of law, in the judgment, with respect to count six, or errors of fact therein of such materiality or substance, as to properly require the amendment of the judgment as to count six, as prayed in defendant's motion.

We have reviewed the conclusions expressed in our opinion and the evidence on which they are based in light of the defendant's motion. We find no error and no reason to modify the views there expressed. His motion to set aside his conviction under count eight is hereby denied.

16. KOERNER—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949 counsel for defendant Koerner filed with the Secretary General a memorandum and amendment motion, and an appendix thereto, alleging errors in fact and law in the judg-

ment of this Tribunal, in which judgment said defendant was convicted under counts one, six, seven, and eight. It also appears that on 16 June 1949, the prosecution submitted an answering brief to said memorandum and amendment motion, and that on June 30th defense counsel filed a rejoinder to said answering brief of prosecution counsel. It also appears that following the rendering of said judgment and prior to filing of above memorandum and answering brief, and rejoinder, the defendant's counsel had joined in a petition for plenary session of Tribunals containing arguments herein also considered.

The Tribunal having considered the foregoing memorandum and motion for amendment, the answering brief in said matter, and the rejoinder thereto, and being advised in the premises,

IT IS ORDERED that said memorandum and motion for amendment be and the same is hereby in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

Counsel contends generally that the Tribunal erroneously convicted defendant because defendant did not occupy positions on a policy-making level, etc., it being claimed, for instance, that the defendant was by the Tribunal erroneously designated to be deputy chairman of the Ministerial Council, whereas he in fact was deputy chairman of the General Council. See page 7 of defendant's memorandum. This, the defendant states, see page 6 of memorandum, "must result in a change in the Tribunal's interpretation of the level of Koerner's position."

A reference, however, to the judgment indicates, page 170, that the Tribunal did not state that Koerner was otherwise than the deputy of the General Council. We quote again the exact statement of the Tribunal from page 170 thereof: "A minister's council, referred to as the *General Council,* was created for the making of principal decisions in connection with the Four Year Plan and its work. Such council included, among others, the State Secretary and Chief of the Reich Chancellery, defendant Lammers, and defendant Keppler. Koerner was Deputy Chairman of *such General Council for the Four Year Plan* from 1939 to 1942. While

only carrying the title of Deputy Chairman he was the virtual chairman thereof, as he regularly presided." [Emphasis supplied.]

We are not able to discern the confusion that defendant's counsel attributes to the Tribunal in this respect. The Tribunal has in this instance stated specifically that Koerner was deputy chairman of the General Council. This is correct. The duties of the General Council are likewise indicated. Confusion is thus avoided as to its functions and authority in that connection, and as stated in the judgment (page 172) "That the Four Year Plan was an instrumentality for the planning and carrying on of aggression is no longer a matter of dispute."

The defendant's contentions with respect to the conviction on count one must be overruled. A careful reading of the judgment with respect to count one indicates that although there was considerable evidence showing knowledge by Koerner of the various planned aggressions of the Reich prior to the attack on Russia, and which aggressions were carried out, the conviction of Koerner under said count is in fact specifically based on the aggressive war on Russia. On page 185 of the judgment (English) it is stated: "The evidence indicates that Koerner participated in the planning and preparation of the aggression against Russia," and on page 189 of the judgment (English) it is stated "We have specifically alluded to but a small portion of the voluminous evidence introduced with respect to these matters, but the foregoing and other evidence in the record satisfied the Tribunal beyond a reasonable doubt that defendant Koerner participated in the plans, preparations, and executions of the Reich's aggression against Russia."

We do not observe any claimed factual errors on this specific phase of the charge against Koerner under count one. Certainly there are none of any material significance.

With respect to count six and count seven, under which defendant was convicted, we have given study and thought to the claims of defendant as contained in his memorandum of claimed errors, and we must reject same as without merit. No material discrepancies or errors are presented requiring correction.

Counsel for the most part reargues what he already had argued in prior final briefs. It consists mostly of the contention that the Tribunal misinterpreted the evidence. The Tribunal does not, however, believe that in the instances here claimed, any material error in this respect was made.

A review of defendant's motion reveals no substantial errors and the record amply establishes our finding of guilt. The defendant's motion to set aside his conviction under count eight should be, and hereby is, denied.

17. PLEIGER—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949 defendant Pleiger filed a memorandum claiming errors in the judgment with respect to the Tribunal's findings against him in counts six and seven of the indictment, and a motion praying that said defendant be declared not guilty on the charges under counts six and seven and that he be released from prison, or that if the conviction is upheld in full or in part that the penalty be reduced. To the foregoing memorandum and motion the prosecution on 16 June 1949 filed an answering brief, and on 30 June 1949 the defendant filed a rejoinder to the prosecution's answering brief.

It appears also that the defendant, prior to the date of his filing the aforesaid memorandum and motion, joined in a petition for plenary session of the Tribunal for the purpose of examining "the judgment passed on 14 April 1949 by Military Tribunal IV in Case 11."

The Tribunal having considered the memorandum and motion of defendant, the answer of prosecution thereto, the defendant's rejoinder to said petition for plenary session insofar as pertinent herein,

IT IS ORDERED that said defendant's memorandum and motion be, and the same are, hereby, in all respects, denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

It does not appear that the defendant has been able to refer to any errors or discrepancies of such materiality or substance as to justifiably require a change or modification of the conviction of defendant under counts six and seven, or in a reduction of the sentence imposed.

Defendant has for the most part reargued what was already argued and briefed by his counsel before the preparation and rendition of the judgment in this case.

18. KEHRL—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949 defendant Hans Kehrl through his counsel filed a memorandum calling attention to alleged errors in the judgment of the Tribunal wherein defendant Kehrl was convicted under counts five, six, seven, and eight of the indictment, and praying that the convictions be quashed and that the sentence imposed be reduced. It appears also that, prior to the filing of the above memorandum, Kehrl also joined in a petition for plenary session of the Tribunals for the therein expressed purpose of examining "the judgment passed on 14 April 1949 by Military Tribunal IV in Case 11." It appears that on 16 June 1949 the prosecution filed an answer to the memorandum or motion of the defendant herein, and that on 30 June 1949 the defendant filed a rejoinder to said prosecution answer.

The Tribunal having considered said memorandum and motion of the defendant, and the arguments contained in defendant's petition for plenary session as aforesaid, the answering brief of the prosecution and the defendant's rejoinder thereto, and being advised in the premises,

IT IS ORDERED that the prayer of defendant as contained in his memorandum and motion of 10 May 1949, as aforesaid, be, and the same is, hereby in all respects denied.

Memorandum hereto attached is hereby made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

Reference is hereinbefore made to the petition for plenary session joined in by this defendant. The Tribunal again wishes to indicate that it could not grant request for such plenary session, or in fact give consideration thereto, but the arguments against the convictions of this Tribunal as contained in said request for plenary session have been considered in connection with the arguments advanced in support of this defendant's memorandum and motion of 10 May 1949, hereinbefore referred to.

We will now consider the memorandum of defendant.

We have considered defendant's motion respecting his conviction under count five and have again considered the evidence regarding this charge. We find no error and the record discloses without contradiction the position and responsibility which he bore with respect thereto. His motion to set aside his conviction under count five should be, and hereby is, denied.

With respect to counts six and seven, counsel for the defendant in a large measure by his memorandum reargues with great earnestness the evidence and the law here involved, which were exhaustively and at great length argued in briefs before the Tribunal's preparation and rendition of the judgment in this matter. We have again considered the arguments. We have noted the claimed errors and the contention that the judgment as to these two counts is not adequately supported by the evidence. That there is difference of opinion as to the interpretation and value to be placed on the vast number of items of evidence received by the Tribunal, both oral and documentary, is not strange.

The fact that defendant's counsel believes and argues that a different interpretation should have been given various items of evidence received by the Tribunal does not in the opinion of the Tribunal constitute grounds for amendment or modification of the Tribunal's findings under counts six and seven. Counsel in the course of giving what he considers to be a more correct and proper interpretation of the evidence than that arrived at by the Tribunal apparently strives to minimize the effect of the evidence as a whole as to these counts. Illustrative thereof is the reference to pages 19 and 20 of defendant's memorandum with respect to the Tribunal's finding that Kehrl was a participant in the initiation and carrying out of the Reich program of Aryanization in Czechoslovakia, the memorandum stating "The one and only intimation regarding any participation on Kehrl's part in the so-called Aryanization program is to be found in the passage of the documentary evidence: 'Tonight a meeting of the German banks will take place at Kehrl's office, where directives for Aryanization in this territory will be discussed.' Prosecution Exhibit 3093 [NID–13365], Document Book 144 B, English, page 362."

This does not, however, accurately represent the true situation. Kehrl's extensive authority and participation in the "Germanizing" of Czechoslovakian banking and business, after the invasion of Bohemia-Moravia, is clearly established, despite counsel's contentions to the contrary, and Aryanization, according to the evidence, was one of the most potent and widely employed instrumentalities in such Germanizing process. Under such proof, even

if there were no other, it seems impossible for defendant to divorce himself from "Aryanization" in Czechoslovakia.

The vast amount of evidence adduced as to these two counts, six and seven, in the Tribunal's opinion amply sustains the convictions thereunder. No errors of sufficient materiality or consequence appear, certainly none that would reasonably require from the Tribunal a change in the result reached in the judgment, or in the sentence imposed. This, of course, is not to be construed as a suggestion to the reviewing authority that it should not exercise clemency in this case, if it is deemed proper.

A reexamination of the evidence and the conclusions which we drew therefrom in view of the defendant's motion to set aside his conviction under count eight discloses no error. Defendant's motion to set aside his conviction under this count should be, and hereby is, denied.

E. Separate Memorandum Opinion of Judge Powers Concerning Various Motions, 24 December 1949

MEMORANDUM OF JUDGE POWERS

As a member of the Tribunal which tried Case 11, I have considered the various motions which have been filed since the entry of the judgment in the case and have examined the orders disposing of said motion and the memoranda attached to said orders, all of which were prepared by other members of the Tribunal.

I have signed the orders relating to the motions of Steengracht von Moyland, Woermann, and Von Weizsaecker which reduces the sentences of those defendants. I concur in the orders sustaining a part of the motion to which the order is directed in each case. This, however, does not mean that I concur in the part of the order which denies further relief, and it does not mean that I concur in the memoranda opinions which accompany the orders.

As to the other orders, I have withheld my signature because I am of the opinion that some portions of the motions to which these orders are directed should be sustained, and I do not approve of many of the statements in the memoranda opinions which accompany the orders.

There is no desire on my part to extend unnecessarily an already long record, but it does seem to me that my position should be made clear, especially since I have heretofore dissented from parts of the original judgment. The opinions I then expressed I still hold, and I have no purpose or intention of joining in or approving any decisions which are inconsistent with them. It seemed to me that the absence of my signature on some of these

orders needed an explanation. To supply it is the purpose of this memorandum.

Dated this 24 December 1949.

[Signed] L. W. Powers

XIX. REVISION OF SENTENCES BY THE UNITED STATES HIGH COMMISSIONER FOR GERMANY

A. Introduction

Under Articles XV and XVII of Ordinance No. 7, the sentences imposed by the Tribunal were subject to review by the Military Governor of the United States Zone of Occupation (see Vol. XV, this series, sec. XXV). Except for the sentences in the Ministries case, the sentences in all the cases tried before Tribunals established pursuant to Ordinance No. 7 were initially reviewed by General Lucius D. Clay, the Military Governor. However, on 6 June 1949, the position of the United States High Commissioner for Germany was established, and the Military Government of the United States Zone of Germany was terminated. This occurred before the Tribunal in the Ministries case had passed upon the defense motions alleging errors of fact and law in the judgment (see sec. XVIII, above). After 6 June 1949, the responsibility for the execution of sentences and the disposition (including pardon, clemency, parole, or release) of war criminals convicted at Nuernberg under Control Council Law No. 10 was in the hands of the High Commissioner, the Honorable John J. McCloy. On 31 January 1951, the High Commissioner made his final decisions on clemency with respect to all the sentences outstanding. That part of the High Commissioner's decisions which concern the sentences in the Ministries case are reproduced in section B. The full text of the decisions on the outstanding sentences in all cases, and other related materials are reproduced in Volume XV, this series, section XXV.

B. Final Decision of the United States High Commissioner Concerning the Sentences in the Ministries Case

"I am announcing herewith my decisions on the review which I have undertaken of the sentences rendered by the Military Tribunals established under U.S. Military Government Ordinance No. 7 for the trial of war criminals.

"In large measure my decisions are based on the report of the Advisory Board for Clemency for War Criminals which was appointed to review these cases.

"In all cases where the Board has recommended commutation of a death sentence I have accepted the recommendation. A very limited number of additional death sentences have been commuted, although the Board, in its report, found no ground for clemency. As regards sentences of imprisonment, in a few instances my own examination of the circumstances of individual cases has resulted in my reaching a result slightly different from that recommended by the Board as to the precise degree of modification warranted. In general, however, my decisions follow the substance of the Board's report.

"I have adopted certain general recommendations made by the Board. One of these was the increase in the amount of time credited to prisoners against their sentences for good behavior from 5 to 10 days a month. This is the amount generally allowed in prisons in the United States. Moreover credit for good behavior is a standard and effective method of enforcing prison discipline.

"On the recommendation of the Board, I am also granting all prisoners credit against their terms of imprisonment for all forms of pretrial confinement imposed by Allied governmental agencies subsequent to May 8, 1945. Such a credit has heretofore been allowed in a number of cases but in some it appeared that full credit had not been given.

"My conclusions as to modification of specific sentences of prisoners at Landsberg under my jurisdiction and certain general comments which I have to make concerning these cases are as follows:

* * * * * * *

"Case 11—Ministries Case

"Defendants were high-ranking officials who played an important part in the political and diplomatic preparation for initiation of aggressive wars, violation of international treaties, economic spoliation, diplomatic implementation of the genocidal program.

"I have determined to follow the recommendations of the Board in all these cases. There is one case, however, which I feel deserves special comment. This is the case of Gottlob Berger, who was originally sentenced to 25 years imprisonment.

"Berger was a close official associate of Himmler; he was active in the *Heu-Aktion* program by which children were evacuated from the eastern territories and sent to training camps for arma-

ment industries. He was prominent in the creation of and gave protection to the units presided over by the notorious Dirlewanger.

"On the other hand, Berger appears to have been unjustly convicted of participation in the murder of the French General Mesny. At least there is substantial evidence to show that he protested the affair and did what he could to prevent it. Also, Berger, toward the end of the war, actively intervened to save the lives of Allied officers and men who under Hitler orders were held for liquidation or as hostages.

"The judgment shows without contradiction that this prisoner is culpably responsible for much that was illegal and inhumane in the Nazi program and his close association with Himmler is a serious indictment in itself. However, I feel compelled to eliminate entirely from the consideration of the weight of his sentence any participation in the Mesny murder and to give perhaps somewhat greater weight than did the Court to certain humane manifestations toward prisoners which at least in one period of his career he displayed. For these reasons I have approved the recommendation of a reduction in sentence from 25 years to 10 years which the Board has made as a very liberal act of clemency. I have already commuted the sentence of the defendant Ernst von Weizsaecker to time served.

"The conclusions of this case are therefore as follows:

GOTTLOB BERGER	from 25 years to 10 years.
HANS HEINRICH LAMMERS	from 20 years to 10 years.
EDMUND VEESENMAYER	from 20 years to 10 years.
HANS KEHRL	from 15 years to time served.
PAUL KOERNER	from 15 years to 10 years.
PAUL PLEIGER	from 15 years to 9 years.
WILHELM KEPPLER	from 10 years to time served.
GRAF LUTZ SCHWERIN VON KROSIGK	from 10 years to time served."

APPENDIX A

Photographic Reproductions of Documentary Evidence

Der Reichsminister
der Finanzen
A 1301[38] - 97 I g.Rs.

Berlin W.8, 1. September 1938
Wilhelmplatz 1/2

Schnellbrief!

96 Ausfertigungen
Ausfertigung.

Betrifft: Reichsverteidigung und Durchführung des Reichshaushaltsplans für das Rechnungsjahr 1938.

Der vom Führer angeordnete Ausbau der Reichsverteidigung erfordert Maßnahmen außergewöhnlicher Art. Mein Rundschreiben vom 5. Juli 1938 - A 1301[38] - 73 g.Rs. -, das im Anschluß an die grundlegenden Anordnungen des Beauftragten für den Vierjahresplan vom 18. Juni 1938 - St. M.Dev. 921 g.Rs. - erging und die Voraussetzungen für die Lösung der finanziellen Fragen darlegte, ist bei den Ressorts nicht auf das erwartete Verständnis gestoßen. Einschneidende Verfügungen zur Sicherung des Vorrangs der Reichsverteidigung sind daher erforderlich.

Zunächst steht hierbei die Durchführung der öffentlichen Bauten im Vordergrund, soweit diese nicht auf Weisungen des Führers beruhen.

Im Einvernehmen mit dem Ministerpräsidenten Generalfeldmarschall Göring, dem Herrn Beauftragten für den Vierjahresplan, sperre ich mit sofortiger Wirkung alle Mittel für Bauvorhaben, die in die Einzelpläne der Zivilressorts für das Rechnungsjahr 1938 erstmalig eingestellt und noch nicht begonnen sind. Mit der Bewilligung von Ausnahmen ist nicht zu rechnen; im Benehmen mit dem Herrn Beauftragten für den Vierjahresplan werde ich Mittel nur freigeben, wo die Interessen der Reichsverteidigung dies gebieten.

Unter "Beginn" eines Baus im Sinne der vorstehenden Maßnahme ist der erste Spatenstich, nicht schon die Bereitstellung von Baumaterial und Gelände oder die

Herren

Fertigung

Reichsminister.

Fertigung der Baupläne zu verstehen. Inwieweit über die obengenannte Sperre hinaus Bauvorhaben, deren Durchführung bereits begonnen ist, im Interesse der Zusammenfassung aller finanziellen Kraft für die Reichsverteidigung abzubrechen oder zu verlangsamen sind, ist zunächst dem verantwortlichen Ermessen der Ressorts überlassen; Anordnungen für Einzelfälle bleiben vorbehalten. Ich spreche die bestimmte Erwartung aus, daß die Prüfung dieser Frage eilig und unter Zurückstellung auch dringlichst erscheinender Pläne vor sich geht.

Weitere Einsparungen außerhalb des Bauwesens sind unerläßlich. Einige Antworten auf mein Rundschreiben vom 5. Juli 1938 zeigen die erfreuliche Bereitwilligkeit einiger Ressorts, von sich aus den außergewöhnlichen Erfordernissen Rechnung zu tragen. Da die angebotenen Beträge aber im gesamten ungenügend sind, muß ich mir auch hierwegen die weiter erforderlichen Schritte vorbehalten. Ich bitte gleichzeitig, von Anträgen der Ressorts auf Freigabe der letzten 10 v.H. und auf Bereitstellung über- und außerplanmäßiger Mittel künftig abzusehen, da ich ihnen mit Ausnahme von Ausgaben für die Reichsverteidigung nicht zu entsprechen vermag.

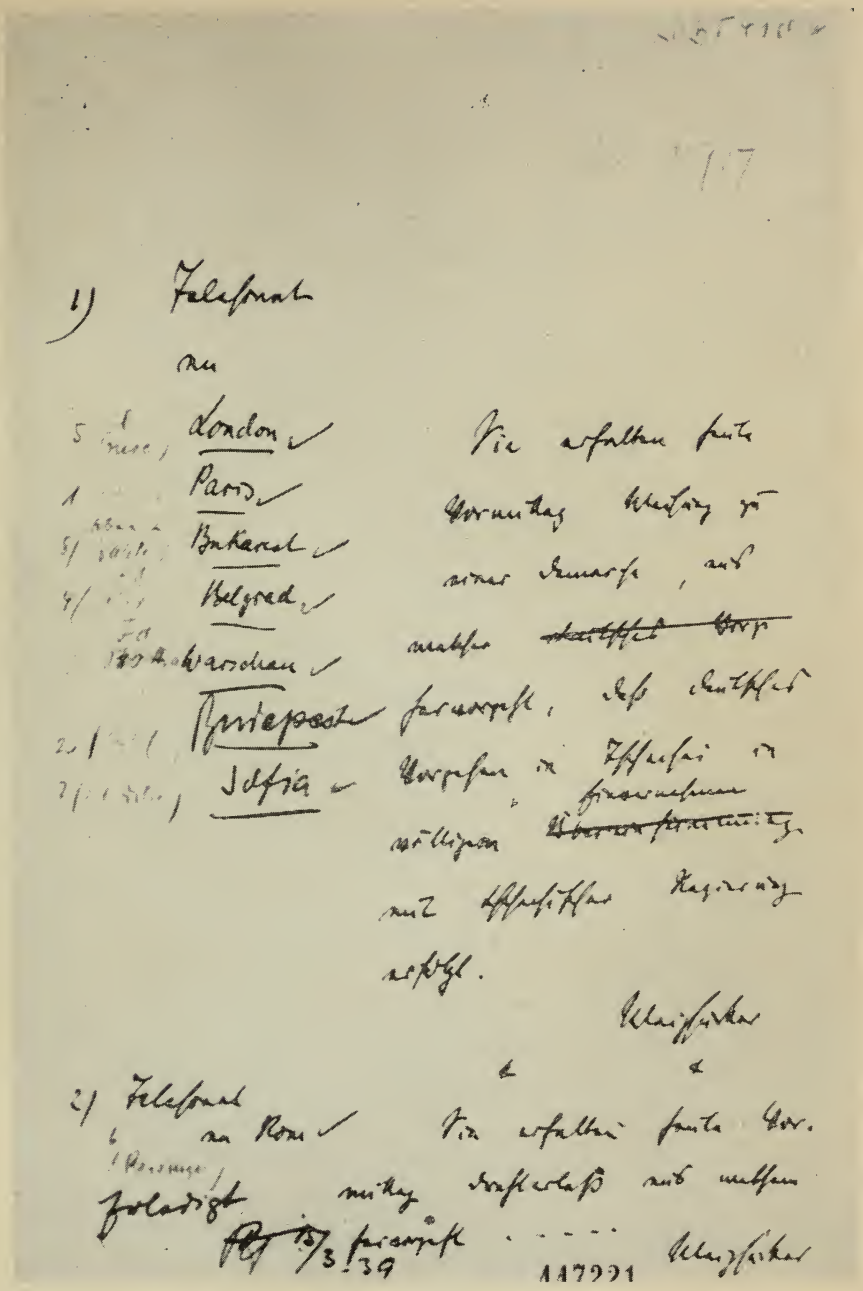
Graf Schwerin v. Krosigk

Abschrift übersende ich zur Kenntnis
im Anschluß an mein Schreiben vom 5. Juli 1938 - 1301/38 - 73 g.I

Graf Schwerin v. Krosigk

Herrn
Ministerpräsidenten
Generalfeldmarschall Göring
Beauftragter für den Vierjahresplan.

NG-5328, PROSECUTION EXHIBIT 3908, LETTER FROM SCHWERIN VON KROSIGK TO THE REICH MINISTERS, CONCERNING REICH DEFENSE AND THE 1938 REICH BUDGET. SCHWERIN VON KROSIGK'S SIGNATURE APPEARS TWICE IN LOWER HALF OF SECOND PAGE. TRANSLATION APPEARS IN VOLUME XII, P. 503.



1) Telefonat

an

London

Paris

Bukarest

Belgrad

Warschau

Budapest

Sofia

Sie erhalten heute Vormittag Weisung zu einer Demarche, aus welcher ~~deutsches Vorg~~ hervorgeht, daß deutsches Vorgehen in Tschechei in völligem ~~Übereinstimmung~~ Einvernehmen mit tschechischer Regierung erfolgt.

Weizsäcker

2) Telefonat

an Rom

Sie erhalten heute Vormittag Drahterlaß aus welchem hervorgeht . . . . .

Weizsäcker

Erledigt

15/3 39

447991

DOCUMENT NG-3917, PROSECUTION EXHIBIT 123, VON WEIZSAECKER'S INSTRUCTIONS FOR TELEPHONE CALLS TO GERMAN DIPLOMATIC MISSIONS REGARDING GERMAN-CZECHOSLOVAK RELATIONS. VON WEIZSAECKER'S SIGNATURE APPEARS TWICE IN LOWER RIGHT. TRANSLATION APPEARS IN VOLUME XII, PAGE 874.

NID - 13557 Kl. AR

A.G. REICHSWERKE ~~AKTIENGESELLSCHAFT FÜR ERZBERGBAU UND EISENHÜTTEN~~
„HERMANN GÖRING"

VORSITZER DES AUFSICHTSRATES
KÖRNER
STAATSSEKRETÄR
DES BEAUFTRAGTEN FÜR DEN VIERJAHRESPLAN
UND DES PREUSSISCHEN STAATSMINISTERIUMS

A R. 820/40

Berlin W 8, den 29.Io.4o.

Sekretariat Pleiger
[illegible]

Mit Schreiben vom 22.Oktober 1940 haben Sie mir den Entwurf eines Schreibens übersandt, in dem die Ansprüche der Reichswerke auf den westlichen Montanbesitz geltend gemacht werden. Es handelt sich im einzelnen um:

1. Den Besitz des "De Wendel"-Konzerns:
   a) Kohlengruben:
      Friedrich Heinrich in Lintfort a/Rh.,
      Zeche Robert Heinrich bei Hamm,
      Zeche Oranien-Nassau,

   b) Hüttenwerke:
      Hayingen und Groß-Moevern in Dtsch-Lothringen,
      Joeuf, hart an der Grenze von Dtsch-Lothringen in Französisch-Lothringen.

2. Den ehemaligen Thyssenschen Besitz in Lothringen, bestehend aus dem
   Hüttenwerk Hagendingen mit dem dazugehörigen kleinen Edelstahlwerk Safe.

3. Das Hüttenwerk Differdingen in Luxemburg

4. Die Sperrminorität der "Arbed":
   Hiervon befinden sich 8% bei Schneider-Creusot,
   20 % im Besitz von zwei belgischen Banken und
   72 % in Händen von kleinem Besitz luxemburgischer Bürger.

Herrn
Generaldirektor P l e i g e r ,
Berlin-Halensee,
Albrecht-Achilles-Str.62/64.

Ich

N - 732

- 2 -

Ich bin grundsätzlich damit einverstanden, daß Sie als Vorsitzer des Vorstandes der Reichswerke A.G. für Erzbergbau und Eisenhütten, Salzgitter, die Ansprüche in geeigneter Form sofort bei dem Reichswirtschaftsministerium (Unterstaatssekretär General v.Hanneken) anmelden. Eine geeignete Unterstützung Ihres Antrags, von dem ich Abschrift erbitte, behalte ich mir vor.

Heil Hitler!

Körner

NID-15558, PROSECUTION EXHIBIT 3769, KOERNER'S LETTER TO PLEIGER, AGREEING ON PRESENTING CLAIMS BY HERMANN GOERING WORKS TO SHARES OF FIRMS IN FRANCE AND LUXEMBOURG. KOERNER'S SIGNATURE APPEARS ON SECOND PAGE. TRANSLATION APPEARS IN VOLUME XIII, PAGE 764.

Der Reichsminister und Chef
der Reichskanzlei
Rk. 365 A g Rs.

Berlin W. 8, den 19. Juni 1941
Voßstraße 6

Geheime Reichssache!

Eigenhändig!

An

Herrn Reichsleiter R o s e n b e r g

Kanzlei Rosenberg
Eing. am 20 JUNI 1941 Nr. 8x/

B e r l i n W 35
Margaretenstraße 17

Betrifft: Verwaltung der osteuropäischen
Gebiete im Falle ihrer Besetzung.

Zum Schreiben vom 3. Juni 1941.

Sehr verehrter Herr Rosenberg!

Zu Ihrem nebenbezeichneten Schreiben hat sich der Herr Reichsaußenminister mit Schreiben vom 13. d.Mts. geäußert. Abschrift dieses Schreibens füge ich zu Ihrer Unterrichtung bei.

Heil Hitler!

Ihr sehr ergebener

NG-1691, PROSECUTION EXHIBIT 542, LETTER SIGNED BY DR. LAMMERS TO ROSENBERG, TRANSMITTING A COMMUNICATION FROM VON RIBBENTROP ON EASTERN EUROPEAN TERRITORIES. TRANSLATION APPEARS IN VOLUME XII, PAGE 1277.

Der Reichsführer-SS
1279/42

Reval, den 28. Juli 1942

[illegible]

Lieber B e r g e r !

[illegible]

Zu Ihren Aktennotizen :

1. Ich lasse dringend bitten, daß keine Verordnung über den Begriff "Jude" herauskommt. Mit all diesen törichten Festlegungen binden wir uns ja selber nur die Hände.
Die besetzten Ostgebiete werden judenfrei. Die Durchführung dieses sehr schweren Befehls hat der Führer auf meine Schultern gelegt. Die Verantwortung kann mir ohnedies niemand abnehmen. Also verbiete ich mir alles Mitreden.
Aktennotiz Lammers erhalten Sie demnächst.

2. Was soll eigentlich das Ehegesetz? Ich wünsche Vorlage bei mir. Kann heute schon sagen, daß ich der Ansicht bin, daß die Verbindungen von Deutschen mit Landeseinwohnerinnen zunächst gar nicht gesetzlich geregelt werden können. Insgesamt müßten sie verboten sein. Ausnahmen für Estland und Lettland müßten dort an zentralen Stellen anlaufen und einzeln nach rassischen Gesichtspunkten entschieden werden. Nach einem Jahr kann man dann die durch das Leben und die Praxis gesammelten Erfahrungen in die Form eines Gesetzes gießen.
So wird regiert und nicht anders.

H e i l H i t l e r !
Ihr

DOCUMENT NO 626, PROSECUTION EXHIBIT 2378, COMMUNICATION FROM HIMMLER TO BERGER, ON TREATMENT OF JEWS IN THE OCCUPIED EASTERN TERRITORIES. HIMMLER'S INITIALS "HH" APPEAR IN LOWER RIGHT. TRANSLATION APPEARS IN VOLUME XIII, PAGE 240.

NO-1713

6.4.1944

[illegible]/Be/[illegible]. VS-Tgb.Nr. 841 /44 geh.
Adjtr-Tgb.Nr. 854 /44 geh.

Geheim!

Betrifft: Luftwaffenhelfer

An den
Führungsstab Politik
Reichsministerium für die besetzten Ostgebiete
Berlin NW 7
Prinz-Louis-Ferdinand-Str. 2

Führungsstab Politik
Tgb. Nr. P 351a/44 g
Eingeg. 20.4.44
Anl. —

Die Aktion der Luftwaffenhelfer hat sich nach der politischen Seite hin derart ungünstig entwickelt, daß das Ansehen des Reichsostministeriums um ein Haar auf das schwerste gefährdet worden wäre, wir uns in den schärfsten Gegensatz zur Politik des Führers gestellt hätten.

Ich ordne daher an

1) Vereinbarungen irgendwelcher Art, die nicht meine Abzeichnung tragen, sind ungültig.
2) Ich verbiete unmittelbaren Vertrag ohne meine Genehmigung in dieser Sache beim Herrn Reichsminister.
3) Die Gesamtverantwortung für diese Werbemassnahmen (Plakate, Handzettel usw.) übertrage ich dem Hauptbannführer N i c k e l. Er haftet im wahrsten Sinne mit dem Kopf dafür, daß die Sache in Ordnung geht.
4) Über den späteren Einsatz der Ausbildungs- und Betreuungsmöglichkeiten des Reichsostministeriums in dieser Aktion erfolgt weiterer Befehl nach Rücksprache mit den Beteiligten.

2) Führungsgruppe P I Allgemeine Politik
Ministialdirektor Dr. Bräutigam

3) Führungsgruppe II
SS-Brigadeführer Dr. Kinkelin

4) Führungsgruppe III
Prof. Dr. von M e n d e

5) Führungsgruppe IV
Herrn von der Milwe-Schroeden

6) Führungsgruppe P V
Hauptbannführer N i c k e l

SS-Obergruppenführer.

- b.w. -

NO-1713, PROSECUTION EXHIBIT 3362, INSTRUCTIONS FROM BERGER TO HIS SUBORDINATES IN THE POLITICAL LEADERSHIP STAFF OF REICH MINISTRY OF OCCUPIED EASTERN TERRITORIES, CONCERNING AIR FORCE HELPERS RECRUITMENT PROGRAM. BERGER'S SIGNATURE APPEARS IN LOWER RIGHT. TRANSLATION APPEARS IN VOLUME XIII, PAGE 1070.

Personalnachweis

Name: Schellenberg, Vorname: Walter

geb. am: 16.1.1910 in: Saarbrücken

SS-Nr. 124 817 Pg Nr.: 3 504 508

SS Junkerschule:

Orden- und Ehrenzeichen:

Dienstlaufbahn

1	2			3	4	5
Lfde. Nr.	Datum			Dienstgrad	Truppenteil usw.	Inhalt der Verfügung, Art der Veränderung usw.
	Jahr	Tag	Monat			
1	1933	1.	4.	SS-Anwärter	Eintritt in die SS	
2	1934	10.	1.	SS-Mann		
3	1934	17.	10.	SS-Sturmm.		
4	1935	15.	1.	SS-Rttf.		
5	1935	15.	5.	SS-Uscha.		
6	1935	9.	11.	SS-Scharf.	SD - Hauptamt	
7	1936	13.	9.	SS-Oscha.	SD - Hauptamt	
8	1937	20.	4.	SS-Ustuf.	SD - Hauptamt	Führer im
9	1938	30.	1.	SS-Ostuf.	SD - Hauptamt	Führer im
10	1938	1.	8.	SS-Hstuf.	SD - Hauptamt	Führer im
11	1939	30.	1.	SS-Stubaf.	SD - Hauptamt	Führer im
12	1941	1.	9.	SS-Ostubaf.	SD - Hauptamt	Führer im
13	1942	21.	6.	SS-Staf.	SD - Hauptamt	Führer im
14	1943	24.	2.	SS-Staf.	Reichss.H.-Amt	Amtschef
15	1943	21.	6.	SS-Oberf.	Reichss.H.-Amt	Beförderung
16	1944	21.	6.	SS-Brif.	Reichss.H.-Amt	Beförderung
17	1944	1.	12.	Gen.Major d. W.-SS u.Pol.		ernannt

NG-4727, PROSECUTION EXHIBIT 2649, TWO PAGES FROM SCHELLENBERG'S SS PERSONNEL FILE. HIS PHOTOGRAPH IS SHOWN ON FIRST PAGE. TRANSLATION APPEARS IN VOLUME XIII, PAGE 1162.

DER REICHSFÜHRER-SS
CHEF DES SS-HAUPTAMTES

Cd/SHA/Be/.e.

Bitte in der Antwort vorstehendes Geschäftszeichen und Datum anzugeben.

Berlin-Wilmersdorf 1, den
Hohenzollerndamm 31
Postschließfach 58

jetzt: Berlin-Grunewald, den 19.10.43
Douglasstr. 7/11

VS-Tgb.Nr. 1026 /43 geh. Kdos.
Adjtr-Tgb.Nr. 566 /43 geh. Kdos.

3 Ausfertigungen
1. Ausfertigung.

Betrifft: Stabsleiter S c h i c k e d a n z

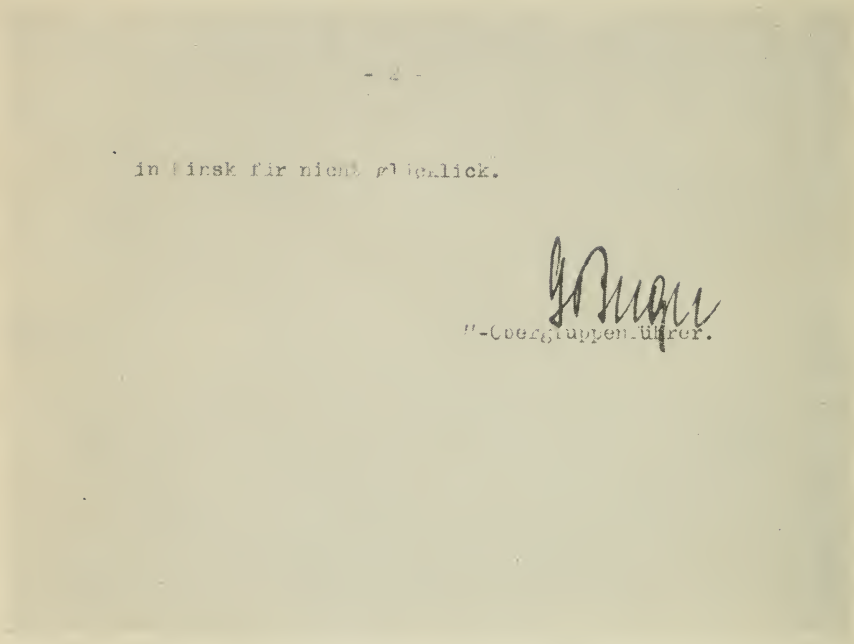
An
Reichsführer-SS
und Reichsminister des Innern
Berlin SW 11
Prinz-Albrecht-Str. 8

Geheime Kommandosache

Reichsführer!

Stabsleiter S c h i c k e d a n z war einmal als Reichsresident für Kaukasien vorgesehen. Mit der dauernden Rückverlegung der Front sieht er nun selbst ein, daß es mit seinem Traum, der König der kaukasischen Völker zu werden, aus ist.
Wohl veranlasst durch das unqualifizierte Verhalten seiner Frau das noch nicht ganz aufgeklärt ist, will er nun unter allen Umständen einen Einsatz haben und bewirbt sich um Minsk.
Reichsleiter R o s e n b e r g ist nicht abgeneigt und gab heute an, daß Reichsminister Dr. L a m m e r s mit diesem Vorschlag einverstanden sei, ja, wenn ich recht gehört habe, daß dieser Vorschlag von L a m m e r s selbst kommen würde.
Veranlasst ist wohl diese Änderung durch das unqualifizierte Verhalten meines Sonderkommandos Dr. D i r l e w a n g e r, das sich jedenfalls - soweit ich feststellen konnte - in jeder Beziehung vorbei benommen hat.
Reichsleiter R o s e n b e r g will aber diesen Vorschlag beim Führer erst machen, wenn er die Gewissheit hat, daß der Führer auch S c h i c k e d a n z akzeptiert.
Ich wäre in besonderem Masse dankbar, wenn Reichsführer-SS bei Dr. L a m m e r s anfragen würde, wie letzterer sich tatsächlich zu diesem Vorschlag verhält.
Ich persönlich halte einen Einsatz S c h i c k e d a n z

- 2 -



NO-621, PROSECUTION EXHIBIT 2394, COMMUNICATION FROM BERGER TO HIMMLER ON PERSONNEL MATTERS IN THE OCCUPIED EASTERN TERRITORIES. HIMMLER'S INITIALS "HH" APPEAR ON FIRST PAGE, UPPER RIGHT CENTER. BERGER'S SIGNATURE IS SHOWN ON SECOND PAGE. TRANSLATION APPEARS IN VOLUME XIII, PAGE 530.

Table of Comparative Ranks

U. S. Army	*German Army*	*U. S. Navy*	*German Navy*	*SS*
2d Lieutenant	Leutnant	Ensign	Leutnant zur See	Untersturmfuehrer
1st Lieutenant	Oberleutnant	Lieutenant (junior grade)	Oberleutnant zur See	Obersturmfuehrer
Captain	Hauptmann	Lieutenant (senior grade)	Kapitaenleutnant	Hauptsturmfuehrer
Major	Major	Lieutenant Commander	Korvettenkapitaen	Sturmbannfuehrer
Lieutenant Colonel	Oberstleutnant	Commander	Fregattenkapitaen	Obersturmbannfuehrer
Colonel	Oberst	Captain	Kapitaen zur See	Standartenfuehrer Oberfuehrer *
Brigadier General	Generalmajor	Commodore	Konteradmiral	Brigadefuehrer
Major General	Generalleutnant	Rear Admiral	Vizeadmiral	Gruppenfuehrer
Lieutenant General	General der Infanterie, der Artillerie, etc.	Vice Admiral	Admiral	Obergruppenfuehrer
General	Generaloberst	Admiral	Generaladmiral	Oberstgruppenfuehrer
General of the Army	Generalfeldmarschall	Admiral of the Fleet	Grossadmiral	Reischsfuehrer

* Equivalent to a senior colonel.

963718—52——65

German Civil Service Ranks[1]

I. *Lower Level*[2]

II. *Intermediate Level*
1. Assistent[3]
2. Sekretaer[3]
3. Obersekretaer[3]

III. *Upper Level*
1. Inspektor[3]
2. Oberinspektor[3]
3. Amtmann[3]
4. Amtsrat[3]

IV. *Higher Level*
1. Regierungsrat
2. Oberregeriungsrat
3. Ministerialrat
4. Ministerialdirigent
5. Ministerialdirektor
6. Staatssekretaer

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[1] The German Civil Service is divided into two main groups: Beamte (officials) and Angestellte (employees). Beamte are classified according to four levels: Beamte of "unteren Dienstes" (lower level), "einfachen mittleren Dienstes" (intermediate level), "gehobenen mittleren Dienstes" (upper level), and "hoeheren Dienstes" (higher level). Angestellte are mainly custodial employees, workers, and minor clerks, but the term also includes some specialists who do not have Beamten status.

[2] Officials of the "lower level" are usually clerical employees and are usually addressed with the titles of their positions (such as "Buerovorsteher," chief clerk).

[3] Usually carries a prefix such as "Regierung," "Verwaltung," "Ministerial," etc.

German Foreign Office Ranks*

	TITLE	LITERAL TRANSLATION
	Upper Civil Service Level	
1.	Konsulatssekretaer	Consulate Secretary
2.	Konsulatssekretaer I. Kl.	Consulate Secretary 1st Class
3.	Kanzler	Chancellor
4.	Amtsrat	Office Councillor (Counsellor)
	Higher Civil Service Level	
1.	Gesandtschaftsrat	Legation Councillor (Counsellor)
	Konsul	Consul
	Legationsrat	Legation Councillor (Counsellor)
	Vizekonsul	Vice Consul
2.	Gesandtschaftsrat I. Kl.	Legation Councillor (Counsellor)
	Konsul I. Kl.	Consul 1st Class
	Legationsrat I. Kl.	Legation Councillor (Counsellor) 1st Class.
3.	Botschaftsrat	Embassy Councillor (Counsellor)
	Generalkonsul	Consul General
	Gesandter	Minister
4.	Generalkonsul I. Kl.	Consul General 1st Class
	Gesandter I. Kl.	Minister 1st Class
5.	Gesandter I. Kl.	Minister 1st Class (as Head of Mission)
6.	Botschafter	Ambassador

Explanation of "Signatures" and "Initials"

[signed] Schmidt——Document signed by Schmidt.

signed: Schmidt——The words "signed: Schmidt" were typed or stamped on the document.

signed signature——The words "signed signature" were typed or stamped on the document.

Schmidt——"Schmidt" typed or stamped.

[Initial] S [Schmidt]——Initial "S" is identified as Schmidt's initial.

[Initial] S——Unidentified initial "S".

Schmidt S [Initialed]——Initial "S" appears next to "Schmidt" typed or stamped name.

* German Foreign Office Ranks follow basically other German Civil Service Ranks (see table on German Civil Service Ranks reproduced above). However, members of the diplomatic and consular services including those assigned within the Foreign Ministry, may carry special titles such as those included in this table.

List of Witnesses in Case 11

[*Note.*—The witnesses in this case appeared either before the Tribunal or before one of the three commissions appointed by the Tribunal. Prosecution witnesses are designated by the letter "P," defense witnesses by the letter "D." The letter "C" after the date when the witnesses appeared indicates appearance before a commission. If the witness was a prosecution affiant called for cross-examination by the defense the letter designation "PA" is used. If the witness was a defense affiant called for cross-examination by the prosecution, the letter designation "DA" is used. As the first column below indicates, the same witness was sometimes called by both the prosecution and the defense at different stages of the trial. The names not preceded by any designation represents defendants.]

	Name	Date of testimony	Appeared before commission	Pages (mimeographed transcript)
D	ABETZ, Otto	1 Jul 48		10676–10690;
		2 Jul 48		10772–10827
P	ADAMS, Foster	15 Jul 48	C	12403–12414
P	ALBRECHT, Fri h	4, 15, 16 Mar; 28 Oct 48		2666–2686; 3260–3339;
			C	26673–26678
D	ALBRECHT, Karl L	25 May 48		6249–6306
DA	ALTENBURG, Guenther	23, 24 Aug 48	C	17600–17612; 17798–17818
PA	ANDRÉ, Fritz	23 Jul 48	C	13570–13610
DA	ANGER, Karla	27 Jul 48	C	13895–13910
DA	ANSMANN, Heinz	14 Oct 48	C	25765–25801
P	AUERBACH, Philipp	27 Feb 48		2509–2522
D	AUST, Herbert	11 Jun 48	C	8413–8434
P	AYACHE, Eugene	23 Mar 48		3965–3980
P/D	BACH-ZELEWSKI, Erich von dem	25 Mar; 1 Jul 48	C	4278–4305; 10691–10722
D	BARANDON, Paul	6 Jul 48	C	11141–11183
PA/D	BARDROFF, Max	9, 10 Aug 48	C	15234–15265; 15376–15403
DA	BARGEN, Werner von	17, 19, 20 Aug 48	C	16514–16545; 17041–17052; 17212–17253
P	BAYRHOFFER, Walther	2 Jun 48	C	7181–7200
P	BEHRENDS, Walter	18 Feb 48	C	2071–2078; 2120–2122
D	BEK, Oskar	11 Jun 48	C	8368–8412
	BERGER, Gottlob	20, 21, 24–28 May; 1, 2 Jun; 27 Oct 48		5976–6009; 6056–6204; 6307–6345; 6403–6495; 6519–6570; 6581–6616; 6641–6738; 6831–6924; 7062–7126;
			C	26595–26611

	Name	Date of testimony	Appeared before commission	Pages (mimeographed transcript)
D	BERGGRAV, Eivind	14 Jun 48		8514–8543
DA	BERNARD, Hans	7 Sep 48	C	20117–20129
DA	BEST, Karl Werner Rudolf	22, 23 Oct 48	C	26786–26906
D	BINSWANGER, Liberatus	14 May 48		5474–5504
DA/D	BLESSING, Karl	9, 10 Sep 48	C	20768–20785; 20894–20945
DA	BOBRIK, Rudolf	7 Sep 48	C	20083–20102
	BOHLE, Ernst Wilhelm	23 Jul 48		13474–13531
P/D	BOLEY, Gottfried	18 Feb; 22, 23, 26 Jul 48	C	2094–2123; 13388–13424; 13533–13569; 13711–13771
PA	BORCHARDT, Erna	11 Aug 48	C	15595–15602
P	BORCHERS, Heinrich Franz Johannes	16 Feb 48		1869–1900
D/DA	BOSCH, Dr. Werner	20 Sep 48	C	21934–22017
PA	BOVENSIEPEN, Otto Richard	22 Oct 48	C	26770–26781
P/D	BRAEUTIGAM, Otto Heinrich	2 Feb; 27 May 48		1012–1024; 6571–6580
P	BRAMMER, Karl August	6 Feb 48		1432–1478
P	BRARD, Joan Claude	17 Mar 48		3419–3461
D	BRILL, Robert	15 Jun 48	C	8724–8749
P	BROCK, Willy	28 May 48	C	6785–6798
DA	BRUNNHOFF, Kurt Heinrich Edward	8 Sept 48	C	20430–20432
DA	BRUNS, Georg Victor	26 Aug 48	C	18456–18473
D	BUELOW-SCHWANTE, Vicco von	23, 24 Jun 48	C	9794–9843; 9963–10006
D	BURCZYK, Georg	16 Aug 48	C	16297–16346
D	BUSCHE, Axel von dem	2 Jul 48	C	10969–10989
D	CARLOWITZ, Adolf von	31 Jul; 2, 3 Aug; 21 Oct 48	C	14355–14373; 14471–14547; 14651–14674; 26432–26441
DA	CHRISTINNECK, Emil	27 Aug 48	C	18710–18751
DA	DAMBERGS, Nicolai	18 Oct 48	C	26086–26129
P	DAMME, Marinus Hendrik	24 Jun 48	C	10051–10057
D	DANCKWERTS, Justus	26, 27 Aug 48	C	18373–18410; 18633–18650
	DARRÉ, Richard Walther	27, 30, 31 Aug; 1, 13, 14 Sep 48		18548–18632; 18825–18927; 18970–19062; 19236–19249; 21134–21141

	Name	Date of testimony	Appeared before commission	Pages (mimeographed transcript)
P	DAUER, Konrad	18 Jun 48	C	9338–9367
D	DEJONG, Adriaan Marie	1 Jul 48	C	10748–10763
P	DELLSCHOW, Fritz	9 Jul 48	C	11634–11645
P	DETMERING, Rolf	24 Feb 48		2304–2306; 2314–2334
DA	DEWALL, Hans Werner von	6 Oct 48	C	24848–24883
DA	DIENSTMANN, Karl	20 Aug 48	C	17260–17273
P	DIETRICH, Kurt	25 Mar 48		4265–4272
	DIETRICH, Otto, *Defendant did not take the stand in his own defense*			
DA	DOEHLE, Dr. Heinrich	24 Aug 48	C	17847–17853
D	DOERTENBACH, Ulrich	1 Jul 48		10586–10617
DA	DUERCKHEIN-MONTMARTIN, Graf von	25 Aug 48	C	18161–18182
P	DVORACEK, Jan	10, 11 Jun 48	C	8179–8206; 8218–8269; 8453–8504
D	EHRENSBERGER, Otto	18, 19 Aug 48	C	16838–16883; 17053–17099; 17290–17347
DA	EISENLOHR, Ernst	17 Aug 48	C	16470–16513
DA	EMDE, Paul	15, 16 Jul 48	C	12427–12444; 12638–12656
D	ENDE, Dr. Konrad	16 Jul 48	C	12567–12635
P	ENGEL, Gerhard Michael	17 Feb 48		1959–1967
DA	ENZIAN, Joachim	15 Oct 48	C	25854–25874
D	EPPENAUER, Franz	10 Jun 48	C	8131–8153
D	ERBSTOESSER, Kurt	19 May 48		5871–5899
	ERDMANNSDORFF, Otto von	16 Jul 48		12524–12526
D	ETZDORF, Hasso von	22 Jun 48		9586–9630
P	FALKENHAUSEN, Alexander von	18, 19 Feb 48		2126–2164
D	FICKER, Dr. Hans	30 Sep; 1, 4, 5 Oct 48	C	24027–24100; 24276–24353; 24448–24534 24627–24669
DA	FISCHER, Robert	6 Oct 48	C	24822–24831
D/P	FLICK, Friedrich	1 Jun;	C	6948;
		21 Aug 48	C	7007–7016;
			C	17355–17424
D	FREMDLING, August	14 May 48		5443–5454
DA	FRENZEL, Ernst	15 Sep 48	C	21571–21579
DA	FREUDENBERG, Dr. Adolph	1 Sep 48	C	19427–19442
D	FRITZSCHE, Hans	16, 17 Jun 48	C	8963–8992; 9081–9149
DA	FROEHLING, Werner	20 Oct 48	C	26321–26324
D	FROMME, Walter	19 Oct 48	C	26293–26302
P	FROST, Harold Christiansen	28 May 48	C	6741–6769

	Name	Date of testimony	Appeared before commission	Pages (mimeographed transcript)
DA	Frost, Ida	6 Oct 48	C	24832–24839
DA	Galler, Helene	8 Sep 48	C	20404–20410
P	Gaus, Friedrich	7, 10 May 48	C	4806–4865; 4899–5020
DA	Gebhardt, Josef	20 Oct 48	C	26316–26319
D	Geilenberg, Edmund	9 Sep 48	C	20650–20701
DA	Geldern-Chrispendorf, Werner von	8 Sep 48	C	20410–20421
P	Gensert, Hubert	5 Mar 48		2759–2781
P	Gissibl, Fritz	4 Feb 48		1252–1286
D	Globke, Hans	10–12 Aug 48	C	15424–15491; 15603–15671; 15831–15879
P/D	Gmelin, Hans	18 Jun 48	C	9296–9336
D	Goering, Emmy	2 Sep 48	C	19622–19649
DA	Goering, Franz	3 Aug 48	C	14675–14692
D	Goennert, Fritz	14 Sep 48	C	21256–21321
P	Goldstein, Bernhard	8 May 48	C	4887–4898
P	Graeber, Markus	8 May 48	C	4867–4886
D	Gramsch, Friedrich	6, 9 Aug 48	C C	15065–15094; 15179–15234
P	Grosser, Ernst	15 Jun 48	C	8765–8781
P	Grothe, Bruno	18 Feb 48		2063–2069
PA	Grothmann, Werner	7 Jun 48	C	7670–7671
DA	Grundherr, Dr. Werner von	24, 25 Aug 48	C	17854–17897; 18085–18161
D	Gschwend, Wilhelm	11, 14 Jun 48	C	8434–8451; 8612–8618
PA	Gutterer, Leopold	19 Oct 48	C	26304–26309
DA	Hacke, Barbara	8 Sep 48	C	20422–20429
DA	Haidlen, Richard	31 Aug 48	C	19217–19234
D	Halder, Franz	8, 9 Sep 48	C	20393–20403; 20702–20767
DA	Halem, Gustav Adolf von	7 Sep 48	C	20068–20075
DA	Haller, Kurt	8 Sep 48	C	20432–20450
P	Hanneken, Hermann von	24 Mar 48		4106–4132
P	Harmening, Rudolf	25 Mar 48		4234–4265
P	Hartl, Albert Alfred	23 Mar 48		4017–4027
D	Haushofer, Heinz	29, 30 Sep 48	C	23711–23719; 23935–24011
D	Heermann, Kurt	24, 25 May 48		6209–6248
DA	Hellenthal, Dr. Walter von	7 Sep 48	C	20111–20116
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DA	HOLLEBEN, Werner von	7 Sep 48	C	20102–20110
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D	HUPPENKOTHEN, Walter	2 Jul 48	C	10933–10954
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Biographical Index of Principal Persons Referred to in the "Ministries Case"

The following index is limited to persons whose names appear frequently in documents and testimonies in this case and/or to persons who held positions of prominence in relation to the subject matter covered. Generally, information presented applies to the period 1933–45, with main emphasis on the years 1938–45.

German military ranks, civil service and Foreign Service titles in the Foreign Office have been translated into English, wherever possible and usually the highest known rank is given. In the case of German military or paramilitary (i.e. SS, SA, etc.) personnel, the equivalent rank in the branch of service of the United States armed forces has been used. With few exceptions the SS ranks ascertainable have been of the grades of colonel and above. Ranks or positions held in paramilitary formations other than the SS are, as a rule, not given.

Officials on duty in the German Foreign Office who had held positions in the German Foreign Service usually kept their Foreign Service title, and were promoted in it, instead of assuming civil service rank. To distinguish German Foreign Service ranks and titles (FSR) from other ranks and titles, the letters "FSR" have been placed in parenthesis behind the title, whenever necessary for clarity. For further information on German military, civil service and Foreign Office ranks, see tables of comparative ranks, above in this appendix.

The designation of offices, agencies and organizations, have, as far as practicable, been translated into English. More detailed data on German governmental and economic organizations and on Nazi Party formations is contained in "Basic Information," which is reproduced in section IV, volume XII, this series.

Generally, the spelling of names of individuals has not been anglicized.

ABETZ, OTTO—German Ambassador in Paris, 1940–44; Political Adviser to German Military Commander in France, 1940–44; Specialist for French Affairs, Ribbentrop Office, 1935–40; Adviser on French Affairs to Reich Youth Leader, 1935–40; Brigadier General in SS.

ALBRECHT, ERICH—Minister (FSR); Chief, Legal Division, German Foreign Office, 1943–45; Deputy Chief, Legal Division, German Foreign Office, 1937–43.

ALPERS, FRIEDRICH—State Secretary, Reich Office for Forestry, 1937–45; Chief, Division Forestry, Four Year Plan; Member, General Council, Four Year Plan; Lieutenant General in SS.

ALTENBURG, GUENTHER—Minister (FSR); Member, Personal Staff of Reich Foreign Minister, 1943–44; Reich Plenipotentiary

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for Greece, 1941–43; Chief, Information Division, German Foreign Office, 1939; Chief, Austrian and Czechoslovak Affairs, Political Division, German Foreign Office, 1938–39.

AMMAN, MAX—President, Reich Press Chamber, 1933–45; Chief, Central Publishing House of NSDAP (Franz Eher, Successor), 1922–45; Reichsleiter in NSDAP; Lieutenant General in SS.

ASCHMANN, GOTTFRIED—Minister (FSR); Chief, Information and Press Division, German Foreign Office 1933–1939.

ATTOLICO, BERNARDO—Italian Ambassador to the Holy See, 1940–February 1942; Italian Ambassador to Germany, September 1935–May 1940.

BACH-ZELEWSKI, ERICH VON DEM—Lieutenant General in SS and of Police; Chief of Anti-Partisan Units, 1943–45; Higher SS and Police Leader, Central Russia, 1941–42.

BACKE, HERBERT—Reich Minister, 1943–45; Acting Reich Minister of Food and Agriculture, April 1942–45; State Secretary, Reich Ministry of Food and Agriculture, 1933–43; Chief, Division Food, Four Year Plan; Member, General Council, Four Year Plan; Lieutenant General in SS.

BAYRHOFFER, WALTHER—Member, Supervisory Board, German Gold Discount Bank, 1942/43–1945; Member, Reichsbank Directorate, February 1939–45; Official in Reich Ministry of Finance.

BECK, JOZEF—Colonel; Foreign Minister of Poland, 1932–39.

BECK, LUDWIG—General; Chief of Staff, German Army, 1935–September 1938.

BENE, OTTO—Minister (FSR); Representative of German Foreign Office with Reich Commissioner for the Occupied Netherlands, 1940–44; Brigadier General in SS.

BENES, EDUARD—President of Czechoslovakia, 18 December 1935–5 October 1938.

BENTZ, A.—Plenipotentiary for the Extraction of Mineral Oil, Four Year Plan; Official in Reich Office for Soil Research.

BERAN, RUDOLF—Prime Minister of Czechoslovakia, November 1938–March 1939.

BERGER, GOTTLOB—Lieutenant General in SS and in Armed SS; Military Commander in Czechoslovakia, September 1944; Chief, Prisoner of War Affairs (under Reichsfuehrer SS), October 1944–45; Chief, Political Directing Staff, Reich Ministry for the Occupied Eastern Territories, 10 August 1943–January 1945; Liaison Officer of Reichsfuehrer SS to Reich Minister for Occupied Eastern Territories, July 1942–45; Chief, SS Main Office, April 1940–45; Chief, Recruitment Office, Armed SS, 1 July 1939–31 December 1939.

BERGER, HUGO-FRITZ—Ministerial Director; Official in Reich

Ministry of Finance; Member, Supervisory Board, German Resettlement Trustee Company (DUT).

BERNDT, ALFRED-INGEMAR—Ministerial Director; Official in Reich Ministry for Public Enlightenment and Propaganda; Brigadier General in SS.

BEST, KARL R. W.—Reich Plenipotentiary in Denmark, November 1942–45; Chief, Civil Administration Department of German Military Commander of France, 1940; Ministerial Director, Reich Security Main Office; Member, Security Service 1935–45; Lieutenant General in SS.

BICHELONNE, JEAN—State Secretary for Industrial Production, Vichy government of France; Acting Minister of Labor, Vichy government.

BISMARCK, OTTO C., Prince von—Minister in German Embassy in Rome, April 1940–September 1943; Deputy Chief, Political Division, German Foreign Office, 1937–39.

BLOMBERG, WERNER E. F.—Field Marshal; Commander in Chief, German Armed Forces, 1935–4 February 1938; Reich War Minister, 1935–4 February 1938; Reich Defense Minister, 30 January 1933–35.

BODENSCHATZ, KARL—Lieutenant General; Liaison Officer of German Air Force to Fuehrer Headquarters, 1943–44; Chief, Personal Staff of the Commander in Chief, German Air Force, 1943; Chief, Ministerial Office, Reich Air Ministry, 1938–42.

BOHLE, ERNST W.—Chief, Foreign Organization of NSDAP, 1933–45; State Secretary, German Foreign Office, December 1937–November 1941; Chief, Foreign Organization in Foreign Office, 30 January 1937–November 1941; Gauleiter in NSDAP; Lieutenant General in SS.

BONNET, GEORGES—Foreign Minister of France, April 1938–September 1939.

BORMANN, MARTIN—Reich Minister, 1944–45; Chief, Party Chancellery, 1941–45; Chief of Staff, Deputy of the Fuehrer of the NSDAP, 1933–41; Member, Ministerial Council for the Defense of the Reich; Reichsleiter in NSDAP; Lieutenant General in SS.

BOUHLER, PHILIPP—Chief of Fuehrer Chancellery, 1934–45; Business Manager of NSDAP, 1925–34; Reichsleiter in NSDAP; Lieutenant General in SS.

BRAEUTIGAM, OTTO H.—Consul General; Liaison Officer of Reich Minister for Occupied Eastern Territories to High Command of the German Army (OKH), June 1941–January 1945; German Consul General in Batum (Caucasus), 1940; Official in Economic Policy Department, German Foreign Office, 1939–40; Staff Member, German Embassy in Paris, 1936–39.

BRAUCHITSCH, WALTHER H. H. A. VON—Field Marshal; Commander in Chief, German Army, February 1938–December 1941; Member, Secret Cabinet Council.

BRINKMANN, RUDOLF—State Secretary, Reich Ministry of Economics, 1938–39; Member, General Council, Four Year Plan; Member, Managing Board, German Gold Discount Bank; Member, Reichsbank Directorate; Generalreferent and Chief, Export Division, Reich Ministry of Economics; Official in Reich Ministry of Economics, 1934–39.

BRINON, FERNAND DE—Ambassador; Delegate General of Vichy government (in Paris), for Occupied France, 1941–44.

BRUECKNER, WILHELM—Lieutenant General in SA; Personal Adjutant to Hitler, 1930–40.

BUEHLER, JOSEF—State Secretary and Deputy of Governor General of Poland (Government General), 1940–January 1945; Chief, Central Administration, Government General, November 1939–40.

BUELOW-SCHWANTE, VICCO K. A. VON—German Minister, later Ambassador, to Belgium, October 1938–40; Chief, Protocol Division, German Foreign Office, 1935–38; Chief, German Affairs Office, German Foreign Office, 1933–35.

BUERCKEL, JOSEF—Reich Governor for the Westmark (Lorraine, Saar, Palatinate), 1941–45; Gauleiter of NSDAP for the Westmark, 1941–45; Chief of Civil Administration for Lorraine, 1940–44; Reich Governor of Vienna, 1939–40; Gauleiter of NSDAP for Vienna, 1939–40; Reich Commissioner for the Reunion of Austria with the German Reich, 1938–40; Gauleiter of NSDAP for the Palatinate (Pfalz), 1925–38; Reich Commissioner for the Saar, 1935; Lieutenant General in SS.

BURCKHARDT, KARL J.—President, International Committee of Red Cross, 1939–45; League of Nations High Commissioner for Danzig, 18 February 1937–1 September 1939.

CANARIS, WILHELM—Admiral; Chief, Office of Foreign Intelligence and Counterintelligence, High Command of the German Armed Forces (OKW), 1938–44.

CHAMBERLAIN, NEVILLE—Prime Minister of Great Britain, May 1937–May 1940.

CHVALKOVSKY, FRANTISEK K.—Czechoslovak Minister to Germany, 1939; Czechoslovak Minister of Foreign Affairs, October 1938–March 1939.

CLODIUS, KARL—Ministerial Director; Delegation Chief for trade treaty negotiations, Economic Policy Division, German Foreign Office; Deputy Chief, Economic Policy Division, Foreign Office.

CONTI, LEONARDO—State Secretary in Reich Ministry of In-

terior, 1939–45; Reich Health Leader, 1939–45; Lieutenant General in SS.

COULONDRE, ROBERT—French Ambassador to Germany, November 1938–September 1939.

CHURCHILL, WINSTON S.—Prime Minister and Minister of National Defense of Great Britain, 1940–45; First Lord of the Admiralty, 1939–40.

DALADIER, EDOUARD—Prime Minister and Minister of National Defense of France, 1938–40.

DALUEGE, KURT—General in SS and of Police; Chief of SS Main Office Regular Police and Chief of German Regular Police, 1936–44; Acting Reich Protector of Bohemia-Moravia, June 1942–August 1943.

DARRÉ, WALTHER R.—Reich Minister of Food and Agriculture, June 1933–45 (inactive, April 1942–45); Reich Peasant Leader, 1933–45 (inactive, April 1942–45); Chief, SS Race and Settlement Main Office, 1931–38; Reichsleiter in NSDAP; Member, Small Ministerial Council, Four Year Plan; Lieutenant General in SS.

DAVIGNON, JACQUES, VICOMTE—Belgian Minister, later Ambassador, to Germany, 1936–40.

DIETRICH, OTTO—State Secretary in Reich Ministry for Public Enlightenment and Propaganda, 1937–45; Press Chief of Reich government, 1937–45; Reich Press Chief of NSDAP, 1932–45; Reichsleiter in NSDAP; Lieutenant General in SS.

DIRKSEN, HERBERT VON—German Ambassador to Great Britain, May 1938–August 1939.

DIRLEWANGER, OSKAR—Senior Colonel in SS and in Armed SS (Reserve); Commander, SS Assault Brigade "Dirlewanger," 1940–45.

DOENITZ, KARL—Admiral of the Fleet; Head of so-called Doenitz Cabinet of Germany, formed in May 1945; Commander in Chief, German Navy, January 1943–45.

DOLLFUSS, ENGELBERT—Federal Chancellor of Austria, 1932–25 July 1934.

DORPMUELLER, JULIUS—Reich Minister of Transportation, January 1937–45; Director General, German State Railways, 1926–45.

DURCANSKY, FERDINAND—Minister of Foreign Affairs of Slovakia, March 1939–July 1940; Minister of Interior of Slovakia, October 1939–July 1940; Minister of Transportation in autonomous Slovak Government, December 1938–March 1939.

EDEN, ANTHONY—Secretary of State for Foreign Affairs, Great Britain, 1935–38, and 1940–45.

EHRENSBERGER, OTTO—Ministerial Director; Chief, Department I-R (Reich defense matters—civil legislation and administration), Reich Ministry of Interior, 1941–45; Permanent Deputy of State

Secretary Stuckart, October 1940–45; Official in Reich Ministry of Interior, 1938–45.

EICHMANN, ADOLF—Lieutenant Colonel in SS; Chief of Amt IV B 4 (Office for Jewish Affairs of Secret State Police), Reich Security Main Office, 1941–45.

EISENLOHR, ERNST—Minister (FSR); Deputy of Ambassador for Special Assignments Ritter in German Foreign Office, September 1939–42; German Minister to Czechoslovakia, February 1936–September 1938.

ELTZ-RUEBENACH, PAUL, BARON VON—Reich Minister of Posts and Reich Minister of Transportation, June 1932–February 1937.

ERDMANNSDORFF, OTTO VON—Deputy Chief, Political Division, German Foreign Office, 1 September 1941–45; German Minister to Hungary, May 1937–June 1941.

ETZDORF, HASSO VON—Senior Legation Counselor; Liaison Officer of German Foreign Office to High Command of the Army (OKH), 1939–45.

FALKENHAUSEN, ALEXANDER VON—Lieutenant General; German Military Commander of Belgium and Northern France, May 1940–July 1944.

FALKENHORST, NIKOLAUS VON—General; Commander, German Armed Forces in Norway, December 1940–January 1945.

FEGELEIN, HERMANN—Major General in SS and in Armed SS; Liaison Officer of Reichsfuehrer SS at Fuehrer Headquarters, 1944–45.

FICKER, HANS—Reich Cabinet Counselor; Chief, Department E (charged with processing matters concerning the following agencies: Ministries of Interior, Justice, Church Affairs, Air; Reichsfuehrer SS and Chief of German Police; High Command of the Armed Forces; Party Chancellery; Chiefs of Civil Administration in occupied territories) in Reich Chancellery; Official in Reich Chancellery, 1939–45.

FISCHBOECK, HANS—State Secretary; Reich Commissioner for Price Administration; Commissioner General for Finance and Economic Affairs with Reich Commissioner for the Occupied Netherlands, 1940–42; Minister of Commerce in Seyss-Inquart Cabinet of Austria, March 1938; Leader in Nazi Party of Austria (before the Anschluss in March 1938); Brigadier General in SS.

FLICK, FRIEDRICH—Director General; General Manager and principal proprietor of Friedrich Flick Kommanditgesellschaft (holding company of Flick concern); Member, Directorate, Reich Association Iron, 1942–45; Member, Advisory Council, Economic Group Iron Producing Industry, 1939–45; Military Economy Leader.

FORSTER, ALBERT—Reich Governor of Danzig-West Prussia,

1939–45; Gauleiter of NSDAP for Danzig-West Prussia, 1939–45; Gauleiter of NSDAP for Danzig, 1930–39; Lieutenant General in SS.

FRANÇOIS-PONCET, ANDRÉ—French Ambassador to Germany, 1931–38.

FRANK, HANS—Reich Minister, December 1934–45; Governor General of Poland, (Government General), October 1939–45; Plenipotentiary General of the Four Year Plan for the Government General; Reichsleiter in NSDAP.

FRANK, KARL H.—State Minister, German Administration in Protectorate Bohemia-Moravia, 1943–45; State Secretary, German Administration in Protectorate Bohemia-Moravia, 1939–43; Higher SS and Police Leader for Bohemia-Moravia; Lieutenant General in the SS.

FRICK, WILHELM—Reich Minister; Reich Protector of Bohemia-Moravia, August 1943–45; Plenipotentiary General for the Administration of the Reich, 1939–43; Reich Minister of Interior, 30 January 1933–20 August 1943; Member, Reich Defense Council; Member, Ministerial Council for Defense of the Reich; Reichsleiter in NSDAP.

FRITSCH, WERNER, BARON VON—General; Commander in Chief, German Army, 1935–4 February 1938.

FRITZSCHE, HANS—Ministerial Director; Chief, Radio Division, Reich Ministry for Public Enlightenment and Propaganda, November 1942–45; Official in Reich Ministry for Public Enlightenment and Propaganda, May 1933–45; Chief, German Press Division, Reich Ministry for Public Enlightenment and Propaganda, December 1938–42; Chief, Wireless News Service, 1932–37.

FROELICHER, HANS—Swiss Minister to Germany, June 1938–45.

FROMM, FRIEDRICH—General; Chief of Army Equipment and Commander of the Replacement Army in High Command of the German Army, September 1939–July 1944.

FUNK, WALTHER—Reich Minister; Member, Central Planning Board, Four Year Plan, November 1943–45; Plenipotentiary General for the Economy, August 1939–45; President of Reichsbank, January 1939–45; Reich Minister of Economics, February 1938–45; Press Chief of the Reich government and State Secretary, Reich Ministry for Public Enlightenment and Propaganda, 30 January 1933–37; Member, Ministerial Council for the Defense of the Reich; Member, Small Ministerial Council, Four Year Plan.

GANZENMUELLER, ALBERT—State Secretary, Reich Ministry of Transportation, 1942–1945; Deputy Director General of German State Railways, 1942–1945.

GAULLE, CHARLES DE—General; President, Council of French Provisional government, 1944–45; President, French Committee

of National Liberation and Chairman, Committee of National Defense, 1943–44; Head, French National Committee and Commander in Chief, Free French Forces, 1940–43.

GAUS, FRIEDRICH—Under State Secretary; Ambassador for Special Assignments, German Foreign Office, March 1943–45; Chief, Legal Division, German Foreign Office, 1923–March 1943; Official in German Foreign Office, 1907–45.

GERCKE, RUDOLF—Lieutenant General; Chief of Transportation, High Command of the Army (OKH) 1939–45.

GISEVIUS, HANS—Official in German Legation in Switzerland; Official in Reich Ministry of Interior, 1933–36; Asssociated with German Military Foreign Intelligence and Counterintelligence Service (Abwehr).

GLAISE-HORSTENAU, EDMUND VON—Lieutenant General; German Military Plenipotentiary in Croatia 1942–44; Vice Chancellor, Seyss-Inquart Cabinet of Austria, March 1938; Minister without Portfolio, Schuschnigg Cabinet of Austria, 1936–38.

GLOBOCNIK, ODILO—Major General in SS and of Police; Higher SS and Police Leader for the Adriatic Coastal Area, 1943–45; SS and Police Leader for Lublin District, 1939–43; Gauleiter of NSDAP for Vienna, 1938; Gauleiter of Nazi Party in Austria for Carinthia, 1933.

GOEBBELS, JOSEF—Reich Minister; Reich Plenipotentiary for Total War Effort, 25 July 1944–45; Reich Minister for Public Enlightenment and Propaganda 1933–45; Member, Secret Cabinet Council; Reichsleiter in NSDAP; Gauleiter of NSDAP for Berlin.

GOERDELER, CARL—Lord Mayor of Leipzig, 1930–36; Reich Commissioner for Price Control, 1931–32.

GOERING, HERMANN—Reich Marshal; Plenipotentiary for the Four Year Plan, 18 October 1936–45; Commander in Chief, German Air Force, May 1935–45; Reich Forestry Master, 1934–45; Reich Hunt Master, 1934–45; Reich Minister for Air, 30 January 1933–45; Minister President of Prussia, 30 January 1933–45; President of Reichstag, 1932–45; Acting Reich Minister of Economics, 2 November 1937–February 1938; Chief, Economic Executive Staff East; Chairman, Ministerial Council for the Defense of the Reich; Chairman, General Council of the Four Year Plan; Member, Secret Cabinet Council.

GOTTBERG, CURT VON—Lieutenant General in SS, in Armed SS, and of Police; Commissioner General for White Ruthenia, 1943–44; SS and Police Leader for White Ruthenia, 1941–43.

GRAEVENITZ, HANS VON—Brigadier General; Inspector of Prisoner-of-War Affairs and Chief of Prisoner-of-War Affairs, General Armed Forces Office, High Command of the German Armed Forces (OKW), 1943–April 1944.

GRAMSCH, FRIEDRICH—Ministerial Director; Official in Central Office, Four Year Plan, 1936–44; Official in Prussian State Ministry, 1933–44.

GREIFELT, ULRICH—Lieutenant General of SS and of Police; Chief, SS Main Office of the Reich Commissioner for the Strengthening of Germanism; Deputy Chairman, Supervisory Board, German Resettlement Trustee Company (DUT).

GREISER, ARTHUR K.—Reich Governor and Gauleiter of NSDAP for Wartheland, 1939–45; President of Senate, Free State of Danzig, 1934–September 1939; Lieutenant General in SS.

GRITZBACH, ERICH—Ministerial Director; Chief of Press Bureau, Four Year Plan, 1936–45; Chief of Staff, Office of Minister President of Prussia, 1933–45; Senior Colonel in SS.

GUDERIAN, HEINZ—General; Chief of Staff, High Command of the German Army (OKH), July 1944–February 1945.

GUERTNER, FRANZ—Reich Minister of Justice, June 1932–41.

GUTTERER, LEOPOLD—State Secretary in Reich Ministry for Public Enlightenment and Propaganda, 1941–April 1944; Brigadier General in SS.

HABICHT, THEODOR—Under State Secretary; Deputy Chief, Political Division, German Foreign Office, 1939–40; Inspector for the NSDAP for Austria, 1931–34.

HACHA, EMIL—State President, autonomous administration in the Protectorate Bohemia-Moravia, 1939–45; President of Czechoslovakia, November 1938–March 1939; President, Supreme Administrative Court of Czechoslovakia, 1925–38.

HALDER, FRANZ—General; Chief of Staff, High Command of the German Army (OKH), September 1938–September 1942.

HALIFAX, EDWARD W., Viscount—Secretary of State for Foreign Affairs of Great Britain, 1938–40.

HANNEKEN, HERMANN VON—Lt. General; German Military Commander for Denmark, September 1942–January 1945; Under State Secretary and Chief of Raw Material Division, Reich Ministry of Economics, January 1938–September 1942; Plenipotentiary General for Iron and Steel Production and Allocation, Four Year Plan, July 1937–April 1942; Member, General Council, Four Year Plan; Chief of Staff, Army Ordnance Office, December 1934–July 1937.

HASSELL, ULRICH VON—German Ambassador to Italy, November 1932–February 1938.

HAYLER, FRANZ—State Secretary, Reich Ministry of Economics, 1943–1945; Major General in SS.

HEMMEN, HANS—Minister (FSR); Chief, Economic Delegation of the German Armistice Commission for France, July 1940–44.

HENCKE, ANDOR—Under State Secretary; Chief, Political Division of Foreign Office, May 1943–45; Minister and Specialist for

Foreign-Political Questions, German Legation in Copenhagen, 1940; Legation Counselor at German Legation in Prague, November 1936–March 1939.

HENDERSON, NEVILE, SIR—British Ambassador to Germany, April 1937–September 1939.

HENLEIN, KONRAD—Reich Governor and Gauleiter of NSDAP for Sudetenland, 1938–45; Founder and Leader of Sudeten German Party in Czechoslovakia, 1933–38; Lieutenant General in SS.

HESS, RUDOLF—Reich Minister without Portfolio, 1 December 1933–May 1941; Deputy of Hitler as Fuehrer of the NSDAP, 21 April 1933–May 1941; Member, Ministerial Council for the Defense of the Reich; Member, Secret Cabinet Council.

HEUSINGER, ADOLF—Major General; Chief of Operations Sections, High Command of the Army (OKH), 1940–44.

HEWEL, WALTHER—Ambassador for Special Assignments, German Foreign Office, 1943–45; Chief, Personal Staff of the Reich Foreign Minister, and Plenipotentiary of the Foreign Office at Fuehrer Headquarters, 1938–45; Brigadier General in SS.

HEYDRICH, REINHARD—Lieutenant General in SS and of Police; Acting Reich Protector for Bohemia-Moravia, September 1941–June 1942; Chief, Reich Security Main Office, September 1939–June 1942; Chief of Security Police and Security Service, 1936–June 1942.

HIERL, KONSTANTIN—Reich Minister, August 1943–45; Reich Labor Leader, 1933–45; State Secretary and Chief of Reich Labor Service Division in Reich Ministry of Interior, 1933–43; Reichsleiter in NSDAP.

HILDEBRANDT, RICHARD—Lieutenant General in SS and of Police; Chief, SS Race and Settlement Main Office, April 1943–45; Higher SS and Police Leader for SS Sector Vistula, September 1939–April 1943.

HIMMLER, HEINRICH—Reichsfuehrer of SS, January 1929–45; Chief of Army Equipment and Commander of Replacement Army, July 1944–45; Reich Minister of Interior, 25 August 1943–45; Plenipotentiary General for the Administration of the Reich, 1943–45; Reich Commissioner for the Strengthening of Germanism, 1939–45; Reichsfuehrer SS and Chief of German Police in the Reich Ministry of Interior, June 1936–45; Deputy of the Plenipotentiary General for the Administration of the Reich, 1939–43; Member, Ministerial Council for the Defense of the Reich; Member, General Council, Four Year Plan; Reichsleiter in NSDAP.

HINDENBURG, PAUL VON BENECKENDORFF UND VON—Field Marshal; Reich President and Chief of State, April 1925–August 1934.

HITLER, ADOLF—Fuehrer and Reich Chancellor (Head of State)

1 August 1934–45; Commander in Chief of German Army, December 1941–45; Supreme Commander of the Armed Forces, 1 August 1934–45; Reich Chancellor, 30 January 1933–30 September 1934; Fuehrer of the NSDAP, 1921–45.

HODZA, MILAN—Prime Minister of Czechoslovakia, November 1935–September 1938.

HORNBOSTEL, THEODORE—Chief, Political Division, Foreign Office of Austria, 1930–March 1938.

HORTHY DE NAGYBANYA, MIKLOS VON—Admiral; Regent of Hungary, 1920–October 1944.

HUGENBERG, ALFRED—Reich Minister of Economics and Agriculture, 30 January 1933–29 June 1933; Leader, German Nationalist People's Party (renamed German Nationalist Front early in 1933), 1928–33.

HUNTZIGER, CHARLES L.—General; Minister of National Defense in Vichy government of France, 1940–August 1941; Chief of French Armistice Delegation, July 1940.

IMRÉDY, BÉLA—Minister without Portfolio in charge of Economic Affairs, Hungary, May–August 1944; Prime Minister of Hungary, 1938–39.

JAGOW, DIETRICH VON—German Minister to Hungary, 1941–44.

JAGWITZ, EBERHARD VON—Under State Secretary, Reich Ministry of Economics; Member, General Council, Four Year Plan.

JECKELN, FRIEDRICH—Lieutenant General in SS, in Armed SS, and of Police; Higher SS and Police Leader for Reich Commissariat Ostland (Estonia, Latvia, Lithuania, and White Ruthenia), 1942–44.

JESCHONNEK, HANS—General; Chief of Staff, German Air Force, 1939–43.

JODL, ALFRED—General; Chief of Armed Forces Operations Staff, High Command of the German Armed Forces (OKW) October 1939–45; Chief, Department National Defense, Armed Forces Office in Reich War Ministry, 1935–38.

JUNGCLAUS, RICHARD—Major General in SS and of Police; Staff Member with Higher SS and Police Leader for Ostland, 1944; Plenipotentiary of the Reichsfuehrer SS in Flanders.

JURY, HUGO—Reich Governor and Gauleiter of NSDAP for Lower Danube, 1940–45; Chief, Liaison Office of the NSDAP with the Reich Protector of Bohemia-Moravia; Minister of Social Affairs, Seyss-Inquart Cabinet of Austria, March 1938; Deputy State Leader of the Nazi Party in Austria (before the Anschluss in March 1938); Lieutenant General in SS.

KÁLLAY DE NAGY KÁLLÓ, MIKLOS—Prime Minister of Hungary, 1942–March 1944.

KALTENBRUNNER, ERNST—Lieutenant General in SS and of

Police; Chief, Security Police and Security Service (SD), January 1943–45; Chief, Reich Security Main Office, January 1943–45; State Secretary for Security, Seyss-Inquart Cabinet of Austria, March 1938; Chief of SS in Austria, 1935–38.

KEHRL, HANS—Chief, Planning Office with the Plenipotentiary General for Armament Tasks, November 1943–45; Chief, Raw and Basic Material Office, Reich Ministry for Armament and War Production, November 1943–45; Chief, Raw Materials Division, Reich Ministry of Economics, November 1942–September 1943; General-referent in Reich Ministry of Economics, February 1938–November 1942; Chief, Textile Division, Reich Ministry of Economics, February 1938–November 1942; President, Chamber of Industry and Commerce of Niederlausitz, May 1933–April 1942; Chief Textile Section, Office for German Raw Materials and Synthetic Materials, Four Year Plan, 1936–38; Member, Supervisory Board, German Resettlement Trustee Company (DUT); Brigadier General in SS.

KEITEL, WILHELM—Field Marshal; Chief, High Command of the German Armed Forces (OKW), 4 February 1938–45; Chief, Armed Forces Office in Reich War Ministry, 1935–38; Member, Ministerial Council for Defense of the Reich; Member, Secret Cabinet Council.

KEPPLER, WILHELM—State Secretary; Chief, Reich Office for Soil Research, Reich Ministry of Economics, 1939–45; State Secretary for Special Assignments, German Foreign Office, March 1938–45; Chairman, Supervisory Board, German Resettlement Trustee Company (DUT), November 1939–43; Reich Plenipotentiary for Austria, March–May 1938; Plenipotentiary for Economic Questions to the Fuehrer and Reich Chancellor, 1934–36; Plenipotentiary for Economic Questions to the Reich Chancellor, 1933–34; Chief, Division Industrial Fats, Four Year Plan; Member, General Council, Four Year Plan; Lieutenant General in SS.

KERRL, HANNS—Reich Minister for Church Affairs, 1935–41; Chief, Reich Office for Regional Planning, 1935–41; Reich Minister without Portfolio, 17 June 1934–35; Member, Small Ministerial Council, Four Year Plan.

KILLY, LEO—Reich Cabinet Counselor; Chief of Department C (charged with processing matters concerning the following fields and agencies: Reich Budget; Civil Service; Ministries of Finance and Labor; Plenipotentiary General for Labor Allocation) in Reich Chancellery; Official in Reich Chancellery, 1933–November 1944.

KLEINMANN, WILHELM—State Secretary, Reich Ministry for Transportation, 1937–42; Deputy Director General of German State Railways, 1933–42; Chief, Division Transportation, Four Year Plan; Member, General Council, Four Year Plan.

KOCH, ERICH—Oberpraesident of East Prussia, 1933–45; Reich

Commissioner for the Ukraine, November 1941–44; Gauleiter of NSDAP for East Prussia, 1928–45.

KOEHLER, WALTER—Minister President of Baden, 1933–45; Chief, Economic Division with the Chief of Civil Administration for Alsace, 1941–45; Chief, Division Raw Materials Distribution, Four Year Plan.

KOERNER, PAUL—Member, Central Planning Board, Four Year Plan, April 1942–45; State Secretary and Chief of Central Office, Four Year Plan, October 1936–45; State Secretary, Prussian State Ministry, 1933–45; Deputy Chairman, General Council, Four Year Plan; Deputy Chief, Economic Executive Staff East; Member, Small Ministerial Council, Four Year Plan; Chairman, Verwaltungsrat, Mining and Steel Works East (BHO), 1941–42; Chairman, Supervisory Board, Reich Works for Mining and Steel Enterprises "Hermann Goering," 1941–42; Chairman, Supervisory Board, Reich Works "Hermann Goering," Inc., Berlin (parent holding company), 1939–42; Chairman, Supervisory Board, Reich Works Alpine Montan, "Hermann Goering," 1939–42; Chairman, Supervisory Board, Reich Works for Ore Mining and Iron Smelting "Hermann Goering," Inc. (foundation company), 1937–42; Lieutenant General in SS.

KOPPE, WILHELM—Lieutenant General in SS, in Armed SS, and of Police; State Secretary for Security in the Government General of Poland, 1943–44; Higher SS and Police Leader in the Government General of Poland, 1943–44.

KORDT, ERICH—Minister in German Embassy in China, 1942–45; Minister in German Embassy in Japan, 1941–42; Staff Member, Ministerial Office, German Foreign Office, 1938–41; Embassy Counselor, German Embassy in London, November 1936–February 1938; Staff Member of Ribbentrop Office, 1934–36.

KORDT, THEODOR—Embassy Counselor, German Legation in Switzerland, 1939–45; Embassy Counselor, German Embassy in Great Britain, 1938–September 1939.

KRANEFUSS, FRITZ—Brigadier General in SS; Member, Personal Staff of Reichsfuehrer SS.

KRAUCH, CARL—Chairman, Supervisory Board of I.G. Farben Industrie A.G., 1940–45; Member, Managing Board of I.G. Farben Industrie A.G., 1934–40; Chief, Research and Development Branch, Office for German Raw Materials and Synthetic Materials, Four Year Plan, 1936–38; Plenipotentiary General for Special Tasks of Chemical Production, Four Year Plan.

KRITZINGER, FRIEDRICH W.—State Secretary of Reich Chancellery; Permanent Deputy of the Reich Minister and Chief of the Reich Chancellery.

KROFTA, KAMIL—Foreign Minister of Czechoslovakia, 1936–38.

KRUEGER, FRIEDRICH-WILHELM—Lieutenant General in SS, in

Armed SS, and of Police; Higher SS and Police Leader in the Government General of Poland, 1939–43.

KUBE, WILHELM—Commissioner General for White Ruthenia, 1941–43; Oberpraesident and Gauleiter of NSDAP for Brandenburg (Kurmark), 1933–36.

LAKATOS, GEZA—Prime Minister of Hungary, August–October 1944.

LAMMERS, HANS-HEINRICH—Reich Minister and Chief of Reich Chancellery 1937–45; State Secretary and Chief of Reich Chancellery, 1933–37; Executive Secretary, Ministerial Council for the Defense of the Reich; Executive Secretary, Secret Cabinet Council; Lieutenant General in SS.

LANDFRIED, FRIEDRICH—State Secretary of Reich Ministry of Economics, 1939–43; Member, General Council, Four Year Plan.

LANGE, KARL—Plenipotentiary General for Machinery, Four Year Plan; Business Manager, Economic Group Machinery Construction.

LANGE, KURT—Vice President of Reichsbank, January 1939–45; Chief, Personnel and Civil Service Department of Reichsbank, 1939–45; Deputy Chairman, Supervisory Board, German Gold Discount Bank, 1939–44; Ministerial Director, Reich Ministry of Economics, 1938–39; Chief, Finance Department, Office for German Raw Materials and Synthetic Materials, Four Year Plan, November 1936–38.

LANGOTH, FRANZ—Lord Mayor of Linz, 1944–45; Leader in Greater German People's Party in Austria (before the Auschluss in March 1938); Brigadier General in SS.

LAVAL, PIERRE—Premier, Vichy government of France, April 1942–44; Vice Premier, Vichy government, July–December 1940.

LEIBBRANDT, GEORG—Ministerial Director; Chief, Political Division in Reich Ministry for the Occupied Eastern Territories, 1941–43; Chief, Eastern Affairs, Foreign Policy Office of the NSDAP.

LEOPOLD, JOSEF—Captain; State Leader of the Nazi Party in Austria (prior to the Anschluss in March 1938).

LEY, ROBERT—Reich Housing Commissioner, 1942–45; Founder and Chief of the German Labor Front (DAF), 1933–45; Chief of Party Organization of NSDAP, 1932–45; Reichsleiter in NSDAP.

LIPSKI, JOSEF—Polish Ambassador to Germany, 1934–39.

LITVINOV, MAXIM M.—Foreign Minister of the Soviet Union, 1930–39.

LOEB, FRITZ—Major General; Chief, Office of German Raw Materials and Synthetic Materials, Four Year Plan, October 1936–38; Member, General Council, Four Year Plan.

LOHSE, HINRICH—Reich Commissioner for Ostland (Estonia, Latvia, Lithuania, and White Ruthenia), 1941–44; Oberpraesident

for Schleswig-Holstein, 1933–45; Gauleiter of NSDAP for Schleswig-Holstein 1925–45.

LORENZ, WERNER—Lieutenant General in SS, in Armed SS, and of Police; Chief, Repatriation Office for Ethnic Germans (VoMi), 1937–45; Member, Supervisory Board, German Resettlement Trustee Company.

LUTHER, HANS—Under State Secretary; Chief, Germany Division, German Foreign Office, 1940–February 1943.

MACKENSEN, HANS G.—German Ambassador to Italy, April 1938–September 1943; State Secretary of German Foreign Office, April 1937–38; Major General in SS.

MAGISTRATI, MASSIMO, COUNT—Councilor of Italian Embassy in Berlin.

MANSFELD, WERNER—Ministerial Director; Chief, Division Labor Law and Wage Policy, Reich Ministry of Labor, 1933–42; Chief, Division Labor Allocation, Four Year Plan, 1941–March 1942; Associate Chief, Division Labor Allocation, Four Year Plan, October 1936–41; Member, General Council, Four Year Plan.

MAROTZKE, WILHELM—Ministerial Director; Personal Referent to Chief, Central Office, Four Year Plan (State Secretary Koerner), 1936–42; Official in Prussian State Ministry, July 1934–42; Colonel in SS.

MASARYK, JAN—Foreign Minister in Czechoslovak Government in exile, 1940–45; Czechoslovak Minister to Great Britain, 1925–38.

MASTNY, VOJTECH—Czechoslovak Minister to Germany, 1932–39.

MEERWALD, WILLY—Ministerial Director; Chief of Department A (charged with processing matters concerning the following fields and agencies: Ministries for Public Enlightenment and Propaganda; of Education; Public Health; German Red Cross; Reich Chancellery personnel matters) in the Reich Chancellery; Brigadier General in SS.

MEISSNER, OTTO L. E.—State Minister and Chief of the Presiential Chancellery, 1937–45; State Secretary and Chief of the Presidential Chancellery, 1934–37; State Secretary with the Reich President, 1923–34.

MEURER, FRITZ—Colonel; Chief of Staff, Chief of Prisoners-of-War Affairs (under Reichsfuehrer SS), October 1944–45.

MEYER, ALFRED—Permanent Deputy of the Reich Minister for the Occupied Eastern Territories, 1941–1945; Oberpraesident of Westphalia, 1938–1945; Reich Governor of Lippe and Schaumburg-Lippe, 1933–1945; Gauleiter of NSDAP for Westphalia-North, 1931–1945.

MIKLAS, WILHELM—Federal President of Austria, 1928–March 1938.

MILCH, ERHARD—Field Marshal; Cochairman of Jaegerstab (Special staff organization for fighter plane production), March 1944–45; Member, Central Planning Board, Four Year Plan, 1942–45; Generalluftzeugmeister (Chief of Technical Air Armament), 1941–44; Inspector General of German Air Force, 1939–45; State Secretary, Reich Ministry for Air, 1933–45.

MOLTKE, HANS-ADOLF VON—German Ambassador to Poland, 1934–39; German Minister to Poland, 1931–34.

MUEHLMANN, CAJETAN—Special Commissioner for the Safeguarding of Art Treasures in Government General of Poland, October 1939–September 1943; Leader in Nazi Party of Austria (before the Anschluss in March 1938); Senior Colonel in SS.

MUELLER, HEINRICH—Major General in SS and of Police; Chief, Amt IV (Secret State Police), Reich Security Main Office, 1939–45.

MUFF, WOLFGANG—Lieutenant General; German Military Attaché in Austria (before the Anschluss in March 1938).

MUHS, HERMANN—Acting Reich Minister for Church Affairs, February 1942–45; Acting Chief, Reich Office for Regional Planning, 1942–45; State Secretary of Reich Ministry for Church Affairs, 1937–45.

MURR, WILHELM—Reich Governor of Wuerttemberg, 1933–45; Gauleiter of NSDAP for Wuerttemberg, 1928–45; Lieutenant General in SS.

MUSSOLINI, BENITO—Chief of Republican Fascist government in Northern Italy, September 1943–45; Founder and Leader of Fascist Party in Italy, 1921–45; Prime Minister of Italy, 1922–June 1943.

NAGEL, HANS—Brigadier General; Liaison Officer of Economic Staff East to the Plenipotentiary of the Four Year Plan; Chief, Economic Department, German Military Commander of Belgium and Northern France, June 1940–December 1940.

NEBE, ARTHUR—Major General in SS and of Police; Chief, Amt V (Criminal Police), Reich Security Main Office, 1939–44; Chief of Einsatzgruppe B of Security Police and Security Service, May 1941–November 1941.

NEUBACHER, HERMANN—Consul General; Plenipotentiary of German Foreign Office in the Balkans; Special Representative for Economic Matters in Greece, 1942; Special Representative for Economic Matters in Rumania, 1941; Mayor of Vienna, 1938–39; Leader in Nazi Party in Austria (before the Anschluss in March 1938).

NEUMANN, ERICH—Director General of German Potash Syndicate, 1942–45; State Secretary in Central Office, Four Year Plan, 1938–42; Member, General Council, Four Year Plan, December

1939–42; Secretary, General Council, Four Year Plan, 1938–39; Chief, Division Foreign Exchange in Four Year Plan; Senior Colonel in SS.

NEURATH, CONSTANTIN H. K., BARON VON—Reich Minister; Reich Protector of Bohemia-Moravia, 18 March 1939–20 August 1943 (on leave of absence, September 1941–August 1943); Reich Minister of Foreign Affairs, 2 June 1932–4 February 1938; Reich Minister and President of Secret Cabinet Council; Lieutenant General in SS.

NEUSTAEDTER-STUERMER, ODO—Minister of Public Security, Schuschnigg Cabinet of Austria, November 1936–March 1937.

NORMANN, HANS H. VON—Ministerial Counselor; Staff Member, Central Office, Four Year Plan, 1936–45; Official, Prussian State Ministry, December 1932–45.

NYGAARDSVOLD, JOHAN—Prime Minister of Norway, 1935–40.

OHLENDORF, OTTO—Major General in SS and of Police; Under State Secretary, Reich Ministry of Economics, 1943–45; Chief of Amt III (Security Service), Reich Security Main Office, 1939–41 and 1942–45; Business Manager, Reich Group Trade, 1938–43; Chief, Einsatzgruppe D of Security Service and Security Police, 1941–42; Member Security Service (SD), 1936–45.

OHNESORGE, WILHELM—Reich Minister of Posts, 1937–45; State Secretary in Reich Ministry of Posts, 1933–37.

OLBRICHT, FRIEDRICH—Lieutenant General; Chief, General Army Office in the High Command of the German Army (OKH), February 1940–July 1943.

OSTER, HANS—Brigadier General; Chief, Central Office, Office of Foreign Intelligence and Counterintelligence in the High Command of the Armed Forces (OKW), November 1938–June 1943.

PANZINGER, FRIEDRICH—Colonel in SS; Chief, Amt V (Criminal Police), Reich Security Main Office, 1944–45.

PAPEN, FRANZ VON—German Ambassador to Turkey, 29 April 1939–August 1944; German Minister Extraordinary and Plenipotentiary on Special Mission to Austria, 16 August 1934–13 March 1938; Vice-Chancellor, 30 January 1933–July 1934; Reich Chancellor, 1 June–2 December 1932.

PÉTAIN, HENRI P.—Marshal; Prime Minister and Chief of State in Vichy government of France, June 1940–42; Head of State in Vichy government, 1942–44.

PFUNDTNER, HANS—State Secretary of Reich Ministry of Interior, 1933–43.

PLEIGER, PAUL—Director General; Chairman, Verwaltungsrat, Mining and Steel Works East (BHO), April 1943–45; General Manager, Mining and Steel Works East (BHO), August 1941–March 1943; Reich Plenipotentiary for Coal for the Occupied

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Territories, 1942–45; Chairman, Reich Association Coal, 1941–45; Reich Plenipotentiary for Coal, 1941–45; Chief, Iron and Metals Section, Office for German Raw Materials and Synthetic Materials, Four Year Plan, October 1936–July 1937; Member, Keppler Office, 1933/34–October 1936; Chairman, Managing Board, Reich Works for Mining and Steel Enterprises "Hermann Goering," Inc. (Montan Bloc); Chairman, Managing Board, Reich Works for Ore Mining and Iron Smelting "Hermann Goering," Inc. (foundation company); Chairman, Managing Board, Reich Works "Hermann Goering," Inc. (parent holding company); Chairman, Supervisory Board, Reich Works for Mining and Steel Enterprises "Hermann Goering," Inc.

POHL, OSWALD—Lieutenant General in SS and in Armed SS; Chief, SS Economic and Administrative Main Office, 1942–45; Chief, Amtsgruppe W (economic enterprises), SS Economic and Administrative Main Office, 1942–45; Ministerial Director and Chief, Office for Budget and Buildings, Reichsfuehrer SS and Chief of German Police, Reich Ministry of Interior, 1939–42; Chief, SS Main Office Administration and Economy, 1939–42; Chief, Administrative Office, SS Main Office, 1934–39.

POPITZ, EDUARD H. J.—Prussian Minister of Finance, 21 April 1933–July 1944; Member, Small Ministerial Council, Four Year Plan.

POSSE, HANS E.—State Secretary for Special Assignments, Reich Ministry of Economics; Member, General Council, Four Year Plan.

PRUEFER, CURT—Ministerial Director; Chief, Personnel and Budget Division, German Foreign Office.

PUHL, EMIL J. R.—Deputy President of German Gold Discount Bank, 1944–45; Managing Vice-President of the Reichsbank, August 1940–45; Member, Supervisory Board, German Gold Discount Bank, 1935–45; Member, Board of Directors, Reichsbank, 1934–45.

PUTTKAMER, KARL J.—Commodore; Navy Adjutant with the Armed Forces Adjutant Office at Fuehrer Headquarters, 1935–38 and 1939–45.

QUISLING, VIDKUN A.—Premier, German-controlled government of Norway, February 1942–45; Founder and Leader of Nasjonal Samling Party in Norway, 1933–45; Minister of Defense of Norway, 1931–33.

RAINER, FRIEDRICH—Chief of Civil Administration for Upper Carniola (Oberkrain), 1941–45; Reich Governor and Gauleiter of NSDAP for Carinthia, 1941–45; Reich Governor for Salzburg, 1940–41; Gauleiter of NSDAP for Salzburg, 1938–41; Leader in Nazi Party of Austria (before the Anschluss in March 1938); Lieutenant General in SS.

RAEDER, ERICH—Admiral of the Fleet; Admiral Inspector of the Navy, 1943–45; Chief of High Command of the German Navy (OKM), May 1935–January 1943; Member, Secret Cabinet Council.

RASCHE, KARL—Speaker of the Managing Board, Dresdner Bank, 1942–45; Member, Managing Board, Dresdner Bank, 1935–45; Chairman, Verwaltungsrat, Boehmische Escompte Bank.

REICHERT, JAKOB W.—Business Manager, Economic Group Iron-Producing Industry, 1934–45.

REINECKE, HERMANN—General; Chief, General Armed Forces Office in High Command of the German Armed Forces (OKW), 1938–45.

REINHARDT, FRITZ—State Secretary of Reich Ministry of Finance, April 1933–45; Gauleiter in NSDAP for Upper Bavaria, 1928–30.

REINTHALLER, ANTON—Under State Secretary, Reich Ministry of Food and Agriculture; Leader of Peasant Wing of Nazi Party in Austria (before the Anschluss in March 1938); Brigadier General in SS.

RENTHE-FINK, CECIL VON—German Minister to Denmark, 1936–40; German Minister to, and German Plenipotentiary for, Denmark, 1940–42.

RIBBENTROP, JOACHIM VON—Reich Minister for Foreign Affairs, February 1938–45; Foreign Policy Adviser to Hitler, 1933–45; German Ambassador in London, October 1936–38; Member, Secret Cabinet Council; Lieutenant General in SS.

RICHTHOFEN, HERBERT, BARON VON—German Minister to Bulgaria, 1939–41; German Minister to Belgium, 1936–38.

RIECKE, HANS-JOACHIM—State Secretary in Reich Ministry for Food and Agriculture; Chief, Food and Agriculture Liaison, Reich Ministry for the Eastern Occupied Territories; Chief, Executive Group Food and Agriculture, Economic Staff East; Official in Reich Ministry for Food and Agriculture, February 1936–45; Major General in SS.

RINTELEN, EMIL VON—Ambassador for Special Assignments, German Foreign Office, March 1943–45; Member, Personal Staff of the Reich Foreign Minister, 1941–March 1943; Deputy Chief, Political Division, Foreign Office, 1941; Official in Foreign Office, 1921–45.

RITTER, KARL—Ambassador for Special Assignments, German Foreign Office, 1939–45; Liaison Officer of Reich Foreign Minister to Chief, High Command of the German Armed Forces, (OKW), October 1940–44; German Ambassador to Brazil 1937–38.

ROECHLING, HERMANN—Chief, Reich Association Iron, May 1942–44; Chief, Economic Group Iron-Producing Industry; Presi-

dent, Roechlingsche Eisen und Stahlwerke, G.m.b.H.; Chief, Main Ring Iron–Production, Reich Ministry for Armament and War Production; Reich Plenipotentiary for Iron and Steel in the Occupied Territories; Reich Plenipotentiary for Iron and Steel for the Department Moselle and Meurthe-et-Moselle South.

ROEHNERT, HELMUTH—Chairman, Managing Board Reich Works "Hermann Goering," Inc. (parent holding company); Chairman, Supervisory Board, Reich Works for the Manufacture of Arms and Machinery "Hermann Goering," Inc.; Chairman, Supervisory Board, Reich Works for Inland Waterways Shipping "Hermann Goering," Inc.

ROEHM, ERNST—Chief of Staff of SA, 1929/30–30 June 1934; (shot on 30 June 1934 in connection with suppression of the so-called Roehm Putsch).

ROHLAND, WALTER—Chairman, Managing Board, Vereinigte Stahlwerke, A.G., 1943–45; Deputy Chief, Main Ring Iron Manufacture in Reich Ministry for Armament and War Production, 1942–45; Deputy Chief, Reich Association Iron, 1942–45; Chief, Main Committee Tanks and Tractors in Reich Ministry for Armament and War Production, 1942–43.

ROSENBERG, ALFRED—Reich Minister for the Occupied Eastern Territories, July 1941–45; Chief of Foreign Policy Office of the NSDAP, April 1933–45; Plenipotentiary of the Fuehrer for the Guidance of the Ideological and Philosophical Training and Education of the NSDAP; Reichsleiter in NSDAP.

RUEHLE, GERD—Minister (FSR); Chief, Political Broadcasting Division, German Foreign Office, 1942; Colonel in SS.

RUNCIMAN, WALTER, VISCOUNT—Head of British Mission to Czechoslovakia, 1938.

RUST, BERNHARD—Reich Minister of Education, 30 April 1934–45; Gauleiter of South Hannover-Brunswick, 1925–40.

SARNOW, OTTO—Ministerial Director; Chief, Foreign Trade Division, Reich Ministry of Economics.

SAUCKEL, FRITZ—Plenipotentiary General for Labor Allocation in Four Year Plan, March 1942–45; Reich Governor of Thuringia, 1933–45; Gauleiter of NSDAP for Thuringia, 1927–45; Lieutenant General in SS.

SAUR, OTTO K.—Chief of Staff, Jaegerstab (Special staff organization for fighter plane production), March 1944–45; Chief, Technical Office in Reich Ministry for Armament and War Production; Chief, Central Office, Main Office Technology of NSDAP.

SCHACHT, HJALMAR G.—Reichminister without Portfolio, 1937–22 January 1943; President of Reichsbank, December 1923–December 1930, and March 1933–January 1939; Acting Reich Minister of Economics, August 1934–November 1937; Plenipoten-

tiary General for the War Economy, May 1935–November 1937; Member, Small Ministerial Council, Four Year Plan.

SCHELL, ADOLF VON—Major General; Chief, Motor Transport, General Army Office, High Command of the German Army (OKH), 1940–42; Under State Secretary, Reich Ministry of Transportation, 1940–42; Plenipotentiary General for Motor Transportation, Four Year Plan.

SCHELLENBERG, WALTER—Brigadier General in SS, in Armed SS, and of Police; Chief of Military Intelligence (Amt Mil.), Reich Security Main Office, 1944–45; Chief of Amt VI (Foreign Intelligence), Reich Security Main Office, July 1941–45; Chief of Counterintelligence Branch in Office of Secret State Police (Amt IV-E), Reich Security Main Office, 1939/40–July 1941; Chief of Regional Office of Secret State Police at Dortmund, October 1939.

SCHICKEDANZ, ARNO—Chief of Staff, Foreign Policy Office of NSDAP. Representative of the Reich Minister and Chief of Reich Chancellery with the Governor General of Poland, 1939–1940.

SCHIEBER, WALTHER L.—Chief, Armament Supply Office (Ruestungslieferungsamt) Reich Ministry for Armament and War Production (before 2 September 1943, Reich Ministry for Arms and Munitions), 1942–44; Specialist on Chemistry in Reich Ministry for Arms and Munitions, 1941–42; Brigadier General in SS.

SCHIRACH, BALDUR VON—Gauleiter of Vienna, July 1940–45; Reich Youth Leader, 1933–40; Reichsleiter in NSDAP.

SCHLABRENDORFF, FABIAN VON—Staff Officer, Headquarters, German Army Group Center in Russia, February 1941–44.

SCHLEGELBERGER, FRANZ—Acting Reich Minister of Justice, January 1941–August 1942; State Secretary in Reich Ministry of Justice, October 1931–August 1942.

SCHLEICHER, KURT VON—General; Reich Chancellor of Germany, December 1932–January 1933; Reich Minister of Defense, June–December 1932.

SCHLEIER, RUDOLF—Minister in German Embassy in Paris, 1940–43.

SCHLOTTERER, GUSTAV—Ministerial Director; Chief, Eastern Division, Reich Ministry of Economics, 1941–44; Member, Economic Staff East; Chief, Economic Policy Liaison, Reich Ministry for Occupied Eastern Territories; Official in Reich Ministry of Economics, 1935–44; Senior Colonel in SS.

SCHMEER, RUDOLF—Ministerial Director; Official in Reich Ministry of Economics; Member, General Council, Four Year Plan.

SCHMIDT, GUIDO—Minister of Foreign Affairs of Austria, February–March 1938; State Secretary of Foreign Office of Austria, July 1936–February 1938; Chairman, Managing Board, Reich Works for Inland Waterways Shipping "Hermann Goering," Inc.

SCHMIDT, PAUL K.—Minister (FSR); Chief, Press and News

Division, German Foreign Office, 1940–45; Deputy Chief, Press and News Division, Foreign Office, 1939–40.

SCHMIDT, PAUL O.—Minister (FSR); Chief, Ministerial Office, German Foreign Office; Official interpreter to the Foreign Minister and personal interpreter to Hitler, 1935–45; Interpreter in Foreign Office, 1923–45; Colonel in SS.

SCHMITT, KURT—Reich Minister of Economics, June 1933–August 1934.

SCHMUNDT, RUDOLF—Lieutenant General; Chief, Army Personnel Office, High Command of the German Army (OKH), October 1942–44; Chief Military Adjutant to Hitler 1939–44; Chief, Armed Forces Adjutant Office at the Fuehrer Headquarters, 1939–44.

SCHNURRE, KARL—Deputy Chief, Economic Policy Division, German Foreign Office; Delegation Chief for trade treaty negotiations, Economic Policy Division, Foreign Office; Referent for Eastern Europe, Economic Policy Division, Foreign Office; Referent for Eastern and Northern Europe, Economic Policy Division, Foreign Office.

SCHROEDER, HANS—Ministerial Director; Chief, Personnel and Budget Division, German Foreign Office; Deputy Chief, Personnel and Budget Division, Foreign Office, 1939–40.

SCHUBERT, WILHELM—Lieutenant General; Chief, Economic Staff East, 1941–42.

SCHULENBURG, FRIEDRICH W., COUNT VON DER—Ambassador for Special Assignments, Foreign Office; German Ambassador to the Soviet Union, October 1934–June 1941.

SCHULZE-FIELITZ, GUENTHER—State Secretary of Reich Ministry for Armament and War Production (before 2 September 1943, Reich Ministry for Arms and Munitions), 1942–45; Chief, Technical Division, Reich Ministry for the Occupied Eastern Territories; Chief, Central Office, Inspector General for German Highways.

SCHUSCHNIGG, KURT VON—Leader of "Fatherland Front" in Austria, 1936–38; Federal Chancellor of Austria, July 1934–March 1938.

SCHWARZ, FRANZ X.—Reich Treasurer of the NSDAP, 1925–45; Reichsleiter in NSDAP; General in SS.

SCHWERIN VON KROSIGK, LUTZ, COUNT—Foreign Minister in the so-called Doenitz Cabinet of Germany in May 1945; Reich Minister of Finance, 2 June 1932–45; Member, Small Ministerial Council, Four Year Plan.

SELDTE, FRANZ—Reich Minister of Labor, 1933–45; Founder and Leader of the "Stahlhelm," (German veterans organization of World War I, incorporated into the SA in 1933), 1918–33.

SETHE, EDUARD—Senior Legation Counselor (FSR); Deputy Chief, Legation Division, German Foreign Office, 1943–1945.

SEYSS-INQUART, ARTHUR—Reich Minister without Portfolio, May 1939–45; Reich Commissioner for the Occupied Netherlands, May 1940–45; Deputy Governor General in the Government General of Poland, October 1939–May 1940; Reich Governor of Austria, 15 March 1938–1 May 1939; Federal Chancellor of Austria, 11 and 12 March 1938–15 March 1938; Minister of Interior and Security of Austria, 16 February 1938–15 March 1938; Lieutenant General in SS.

SIDOR, KAREL—Slovak Minister to the Holy See, July 1939–45; Prime Minister of autonomous Slovak Government in March 1939; Deputy Prime Minister of autonomous Slovak Government, December 1938–March 1939; Leader in Slovak People's Party.

SIMON, GUSTAV—Chief of Civil Administration for Luxembourg, 1940–45; Gauleiter of NSDAP for Moselland (Moselle Region) 1931–45.

SIROVY, JAN—General Minister of Defense in Beran government of Czechoslovakia, December 1938–March 1939; Prime Minister and Minister of Defense of Czechoslovakia, September–December 1938.

SIX, FRANZ A.—Minister (FSR); Brigadier General in SS; Chief, Cultural Policy Division, German Foreign Office, February 1943–45; Chief, Amt VII (Ideological Research), Reich Security Main Office, December 1939–May 1940 and November 1941–43; Chief, SS Advanced Kommando Moscow (Vorkommando Moskau), June-August 1941; Chief, Domestic Department (Abteilung Inland), Security Service (SD) Main Office, 1937–39; Chief, Department of Press and Literature, Security Service (SD) Main Office, 1935–37.

SKUBL, MICHAEL—State Secretary for Public Security in Austria, March 1937–March 1938; Police President of Vienna, 1933–38.

SPEER, ALBERT—Reich Minister; Cochairman, Jaegerstab (Special staff organization for fighter plane production) March 1944–45; Member, Central Planning Board, Four Year Plan, April 1942–45; Plenipotentiary General for Armament Tasks, Four Year Plan, March 1942–45; Reich Minister for Armament and War Production, February 1942–45 (before 2 September 1943, Reich Minister for Arms and Munitions); Inspector General of German Highways, February 1942–45; Inspector General of Water and Power, February 1942–45; Chief of Organisation Todt, February 1942–45.

SPERRLE, HUGO—Field Marshal; Commander in Chief, Third German Air Fleet, 1939–44; Commander, Air Force Group 3, 1938; Commander of Condor Legion in Spain, 1936–37.

STALIN, JOSIF V.—Marshal; Chairman of Council of Ministers of the Soviet Union, since 1941; Secretary General of the Central Committee of the Communist Party, since 1922.

STAPF, OTTO—Lieutenant General; Chief, Economic Staff East, July 1942–44.

STAUFFENBERG, CLAUS S., COUNT VON—Colonel; Chief of Staff to the Chief of Army Equipment and Commander of the Replacement Army in the High Command of the German Army (OKH).

STEENGRACHT VON MOYLAND, GUSTAV A., BARON—State Secretary of German Foreign Office, May 1943–45; Member, Personal Staff of Reich Foreign Minister, 1940–43.

STEINBRINCK, OTTO—Reich Plenipotentiary for Coal in the Western Territories, 1942–September 1944; Member, Directorate of Reich Association Coal, April 1941–45; Plenipotentiary General for the Steel Industry in Luxembourg, Belgium and Northern France, May 1940–July 1942; Deputy Chairman, Supervisory Board, Vereinigte Stahlwerke, A.G. 1940–45; Official in Flick enterprises, 1923–39; Military Economy Leader; Brigadier General in SS.

STIEVE, FRIEDRICH—Ministerial Director; Chief, Cultural Policy Division, German Foreign Office, 1932–38.

STREICHER, JULIUS—Publisher of "Der Stuermer," 1923–45; Gauleiter of NSDAP for Franconia, 1925–40.

STUCKART, WILHELM—Acting Minister of Interior in so-called Doenitz Cabinet of Germany, May 1945; State Secretary of Reich Ministry of Interior, September 1943–45; Chief of Staff of the Plenipotentiary General for the Administration of the Reich, 1939–45; State Secretary in Reich Ministry of Interior (Chief of Constitutional and Administrative Department) March 1935–August 1943; Lieutenant General in SS.

STUELPNAGEL, HEINRICH VON—Lieutenant General; German Military Commander for France, February 1942–July 1944.

STUELPNAGEL, OTTO VON—Lieutenant General; German Military Commander for France, October 1940–February 1942; Head of the German Armistice Commission for France at Wiesbaden in 1940.

STUMPFF, HANS-JUERGEN—General; Commander in Chief, Fifth Air Fleet, 1941–44; Commander in Chief, First Air Fleet, 1940; Chief of Staff, German Air Force, June 1937–December 1938.

STUTTERHEIM, HERMANN VON—Reich Cabinet Counselor; Chief of Department D (charged with processing matters concerning the following agencies: Foreign Office, Government General, Protectorate Bohemia-Moravia, Ministry for Occupied Eastern Territories), in Reich Chancellery; Personal Referent to Chief of the

Reich Chancellery, 1934–42; Official in Reich Chancellery, 1934–45.

SUENDERMANN, HELMUT L.—Deputy Press Chief of the Reich government, 1942–45; Deputy Reich Press Chief of the NSDAP, 1942–45; Chief of Staff, Reich Press Chief of the NSDAP, 1937–45; Editor-in-Chief, "Nationalsozialistische Korrespondenz" (NSK), 1933–45.

SYRUP, FRIEDRICH—State Secretary in Reich Ministry of Labor; Associate Chief, Division Labor Allocation, Four Year Plan, October 1936–41; President, Reich Institute for Employment and Unemployment Insurance; Member, General Council, Four Year Plan.

SZÁLASI, FERENC—Prime Minister of Hungary, October–December 1944; Leader of Arrow Cross Party (Hungarian National Socialist Party).

SZTÓJAY, DOEME—Prime Minister of Hungary, March–August 1944; Hungarian Minister to Germany, December 1935–44.

TERBOVEN, JOSEF—Reich Commissioner for Occupied Norway, April 1940–45; Oberpraesident of Rheinprovinz, 1935–45; Gauleiter of NSDAP for Essen, 1928–45.

THADDEN, EBERHARD VON—Legation Counselor; Official in Group Inland II (Liaison with Reichsfuehrer SS and his subordinate agencies), German Foreign Office, 1943–45; Official in Foreign Office, 1937–45.

THIERACK, OTTO G.—Reich Minister of Justice, August 1942–45; President of People's Court, 1936–42.

THOMAS, GEORG—Lieutenant General; General for Special Assignments with the Chief, High Command of the German Armed Forces (OKW), January 1943–August 1944; Chief, Military Economic Office, High Command of the German Armed Forces, May 1942–January 1943; Chief, Military Economic and Armament Office, High Command of the German Armed Forces, September 1939–May 1942; Chief, Armament Office, Reich Ministry for Arms and Munitions, May 1942–November 1942; Chief, Military Economic Staff, Armed Forces Office (after 1937, High Command of the German Armed Forces) November 1934–November 1939; Member General Council, Four Year Plan; Member, Economic Executive Staff East.

TISO, JOZEF—Monsignor; State President of Slovakia, October 1939–45; Prime Minister of Slovakia, March 1939–October 1939; Prime Minister of the autonomous Slovak Government, October 1938–March 1939; Leader of Slovak People's Party, 1938–45.

TODT, FRITZ—Reich Minister for Arms and Munition, 17 March 1940–8 February 1942; Inspector General for Water and Power, 1941–8 February 1942; Plenipotentiary General for the Con-

struction Industry, Four Year Plan, 1938–8 February 1942; Inspector General for German Highways, 1933–8 February 1942; Founder and Chief of Organisation Todt.

TUKA, VOJTECH—Foreign Minister of Slovakia, July 1940–45; Prime Minister of Slovakia, October 1939–45; Deputy Prime Minister of Slovakia, March 1939–October 1939.

TWARDOWSKI, FRITZ VON—Minister (FSR); Chief, Cultural Policy Division, German Foreign Office, 1939–43; Deputy Chief, Cultural Policy Division, Foreign Office, 1935–39; Member, Supervisory Board, German Resettlement Trustee Company.

UDET, ERNST—General; Generalluftzeugmeister (Chief of Technical Air Armament) German Air Force, 1939–41.

VEESENMAYER, EDMUND—German Minister to and Reich Plenipotentiary in Hungary, March 1944–45; Assistant (Referent) to Wilhelm Keppler, 1933–44; Brigadier General in SS.

VLASSOV, ANDREJ A.—Red Army general captured by German Army; formed "Free Russian Army" (Vlassov Army) to fight alongside Germany.

WAEGER, KURT—Lieutenant General; Chief, Armament Office, Reich Ministry for Armament and War Production, November 1942–December 1944.

WAGNER, HORST—Senior Legation Counselor; Chief, Group Inland II (Liaison with Reichsfuehrer SS and his subordinate agencies), German Foreign Office, 1943–45; Colonel in SS.

WAGNER, JOSEF—Reich Commissioner of Price Administration, Four Year Plan, 1936–41; Gauleiter of NSDAP for Silesia, 1935–41; Gauleiter of NSDAP for Westphalia-South, 1930–41; Gauleiter of NSDAP for Westphalia, 1928–30; Member, General Council, Four Year Plan.

WAGNER, ROBERT—Chief of Civil Administration for Alsace, 1940–45; Reich Governor of Baden, 1933–45; Gauleiter of NSDAP for Baden, 1925–45.

WALTER, PAUL—Plenipotentiary for Increasing Mining Production, Four Year Plan; Colonel in SS.

WARLIMONT, WALTER—Lieutenant General; Deputy Chief, Armed Forces Operations Staff, and Chief, Department National Defense, High Command of the German Armed Forces (OKW), January 1942–November 1944; Chief, Department National Defense, High Command of the German Armed Forces, September 1939–42.

WEIZSAECKER, ERNST, BARON VON—German Ambassador to the Holy See, May 1943–45; State Secretary of Foreign Office April 1938–1 May 1943; Ministerial Director and Chief, Political Division, Foreign Office, 1936–March 1938; Brigadier General in SS.

WESTHOFF, ADOLF—Brigadier General; Inspector of Prisoner-of-

War Affairs, General Armed Forces Office, High Command of the German Armed Forces (OKW), April 1944–45; Chief, General Branch in Office of Chief of Prisoner-of-War Affairs, General Armed Forces Office, High Command of the German Armed Forces, April 1943–April 1944.

WIEDEMANN, FRITZ—German Consul General in Tientsin, October 1941–45; German Consul General in San Francisco, July 1940–June 1941; Adjutant to Hitler, 1935–38.

WIEHL, EMIL—Ministerial Director; Chief, Economic Policy Committee (HPA–concerned with foreign economic policy) in the German Government; Chief, Economic Policy Division, German Foreign Office.

WILLUHN, FRANZ—Reich Cabinet Counselor; Chief of Department B (charged with processing matters concerning the following agencies: Ministries of Transportation, Posts, Economics, Food and Agriculture, Armament and War production; Plenipotentiary for the Four Year Plan; Reich Forest Office; Inspector General of Water and Power; Inspector General of German Highways) in Reich Chancellery; Member, General Council, Four Year Plan; Official in Reich Chancellery, 1933–45.

WINKLER, MAX—Chief, Main Trustee Office East; Chief, Combined Finance Boards (Vereinigte Finanzkontore, G.m.b.H.—agency of Reich government for support of German minorities in foreign countries); Mayor of Graudenz.

WOERMANN, ERNST—German Ambassador to China, 1943–45; Under State Secretary and Chief of Political Division, German Foreign Office, April 1938–April 1943; Embassy Counselor, later Minister, in German Embassy in London, 1936–38; Senior Colonel in SS.

WOHLFF, KARL—Lieutenant General in SS and in Armed SS; Highest SS and Police Leader for Italy, 1943–45; Chief, Personal Staff of the Reichsfuehrer SS, 1936–45; Liaison Officer of Reichsfuehrer SS, at Fuehrer Headquarters, 1939–43; Adjutant of Reichsfuehrer SS, 1933–36.

WOLTHAT, HELMUT—Ministerial Director; Commissioner for Netherlands Bank; 1940–41; Chief, Foreign Exchange Control Division, Reich Ministry of Economics, and Chief, Reich Office for Foreign Exchange Control, 1935–39.

ZEITZLER, KURT—General; Chief of Staff, High Command of the German Army (OKH), October 1942–July 1944.

ZERNATTO, GUIDO—Minister without Portfolio, Schuschnigg Cabinet of Austria, February–March 1938; State Secretary for Special Assignment in the Federal Chancellery of Austria, 1936–38; Secretary General of "Fatherland Front" in Austria.

ZSCHINTZSCH, WERNER—State Secretary of Reich Ministry of Education, 1935/36–1945; Senior Colonel in SS.

APPENDIX B

THE ROECHLING CASE—INDICTMENT, JUDGMENT, AND JUDGMENT ON APPEAL*

INDICTMENT

GENERAL TRIBUNAL OF MILITARY GOVERNMENT FOR THE FRENCH ZONE OF OCCUPATION IN GERMANY

Indictment Against the Directors of the Firm of Roechling

The Government Commissioner of the General Tribunal of the Military Government for the French Zone of Occupation in Germany

versus

Hermann Roechling, Ernst Roechling, Hans Lothar von Gemmingen-Hornberg, Albert Maier, Wilhelm Rodenhauser, Directors of the Roechling Enterprises

Under the Moscow Declaration of 30 October 1943; the London Agreement and the Charter of 8 August 1945; Law No. 10 of the Berlin Control Council of 20 December 1945; Ordinance No. 2 of the Supreme Interallied Commander on the Military Government Tribunals; Ordinance No. 36 of 25 February 1946 of the General in Command of the French Zone of Occupation in Germany; Decree No. 43 of 2 March 1946 of the Administrator General of the French Zone of Occupation in Germany; the judgment of the International Military Tribunal of the Major War Criminals dated 1 October 1946 has the honor to submit—

The International Military Tribunal in its judgment of 30 September 1946 has laid down in principle that the political leaders of the "Third Reich" were responsible for the preparation and the

* The materials reproduced herein have been translated from the French language. The Roechling case was tried at Rastatt, Germany (French Zone of Occupation), under Allied Control Council Law No. 10 and certain ordinances of the French Supreme Commander in Germany providing for the trial of war criminals in the French Zone. The case had many interesting features and was cited in numerous arguments at Nuernberg and in the judgment of the Farben case. (United States *vs.* Carl Krauch, et al., Case 6, vol. VIII, this series.) The principal prosecutor in the Roechling case, M. Charles Gerthoffer, had been one of the French prosecutors in the first Nuernberg trial before the International Military Tribunal. In the Ministries case he appeared before the Tribunal as special counsel.

The General Tribunal in the Roechling case was composed of seven judges, five of whom were French, one of whom was Belgium, and one of whom was Dutch. The prosecution in that case included a representative of the Polish Government. The judgment of the General Tribunal was the only judgment after that of the International Military Tribunal in which a defendant was found guilty of the waging (as distinguished from the planning, preparation, and initiation) of aggressive war, or in which an industrialist was found guilty upon charges of aggressive war. However, this finding was set aside on appeal by the Superior Military Government Court. The judgment on appeal directed the forfeiture of the property of the defendants Hermann and Ernst Roechling, and half of the property of the defendant von Gemmingen-Hornberg; measures not included in the original sentences of the General Tribunal hearing the case.

conduct of wars of aggression as well as for the crimes committed during these wars.

But it is apparent that these wars of aggression and these crimes could not have been rendered possible, except with the conscious assistance of certain great German industrialists and financiers whom we will designate under the appellation "Directors of the German Enterprises."

Most of these are at present being prosecuted before the American Military Tribunals sitting at Nuernberg.

As the acts charged against the directors of the firm of Roechling come within the general framework of the immense, but iniquitous, work of the "Directors of the German Economy," it is necessary to recall these concisely and then to separate from the whole the activities imputed to the defendants in this trial.

It has been definitely decided by the International Military Tribunal that the principal object of the "Nazi" Party was, in spite of the most solemn engagements, to seize by violence foreign territories and to enslave, to expel, and even to exterminate their populations by inhuman methods.

This is the theory of "living space" contained in "Mein Kampf" and confirmed by most of the acts of the National Socialists. Most of the "Directors of the German Enterprises" rallied to Hitler before his coming to power; they endowed his party with important subventions and in particular financed the decisive elections of 5 March 1933.

In April 1933, through the intermediary of Krupp, the "Directors of the German Enterprises" began the reorganization of the industry of the Reich, with a view to coordinating it with the requirements of the National-Socialist policy.

If the "Directors of the German Enterprises" plead that they only attached themselves to Hitler in order to oppose communism or "Social Democracy," there exists no doubt that the profound reason for their attitude can be sought in their desire, long before the coming of national socialism, to extend their undertakings beyond the frontiers of the Reich.

This desire to annex is particularly manifested by the fact that they wittingly participated in the rearmament of Germany and in the conduct of wars of aggression.

By virtue of the clauses of the Treaty of Versailles, the Reich was allowed to have only a small army. Control commissions existed to ensure that this obligation was observed.

In reality, they were often deceived and the governments of the Reich that preceded that of Hitler were not unaware of the clandestine military preparations which were financed by a secret extraordinary budget.

The economic preparation of the war and the economic espionage in the potential enemy countries was organized by General Thomas in conjunction with the big industrialists.

The industries were adapted for a future war production, the war industry specialists were maintained in being, and scientific research, far from being abandoned, was resumed.

At the moment of the assumption of power (March 1933), everything was ready for an intensive war production.

From this period, the rearmament entered a very active phase. Stocks, however, were soon exhausted and foreign exchange for obtaining raw materials from abroad was lacking. As Schacht had not succeeded in obtaining this without furnishing the counterpart in actual economic commodities, Hitler created the "Four Year Plan" in October 1936, at the head of which he placed Goering. Whereas Schacht's new plan was an adaptation of the German economy to rearmament, while keeping, as far as possible, to economic laws, the Four Year Plan still further intensified this effort for war preparation without regard to the most elementary economic principles, thus leading the "Third Reich" either to war or to ruin.

In order to induce the industrialists to follow him along this path, Goering made them promises. The aggressive wars which he prepared with their participation would bring them sufficient to compensate them for their present sacrifices.

The big industrialists, notably the ferro metallurgists, accepted the bargain. The poor quality ores of southern Germany were utilized, contrary to the principles of a sound economy; and the cartel, "Hermann Goering Works" was created. In general, the big industrialists put forth all their efforts for the preparation of wars of aggression; certain of them pushed their zeal so far as to lend themselves to economic and military espionage in the countries which were to be invaded.

The "Directors of the German Industry" cannot plead that they participated in the rearmament of the Reich in order to secure for it greater independence in its peaceful relations with other countries. It has in fact been proved that they could not but be aware that the enormous undertaking of the rearmament of the Reich was far in excess of the economic possibilities and technically could not have any other issue than ruin or war.

Hitler recompensed the services of the industrialists who had particularly distinguished themselves in the rearmament by

creating in 1936 the corps of "Wehrwirtschaftsfuehrer" (Military Economic Leaders). Later on, he created an organization "Wehrwirtschaftsrat" (Council for the Military Economy), which took a leading part in the top-level direction of war economy and was composed of the principal "Directors of the German Industry."

When the wars of aggression were unleashed, the role of the "Directors of the German Industry," which up until then had been camouflaged as far as possible, emerged more clearly.

War production, which had been pushed to the maximum during the years preceding, was still further intensified by the economics subjection of the countries occupied by the Reich. This subjection was likewise the work of the "Directors of the German Industry," in conjunction with the technicians of the Wehrmacht and the economists of the German Ministry of Foreign Affairs.

They made themselves possessors of enormous quantities of merchandise or of machinery, improperly removed from the occupied countries and without the payment of real counter-value and often by dishonest means. Finally, contrary to international law and by use of inhuman methods, they forced prisoners of war, deportees, or conscripts to work in their factories.

All these acts had but one sole object, to increase the power of the Reich to make war, with the object of putting into practice the "Theory of Living Space."

Since 1850, the Roechling family has carried on in the Saar a coal and metal business; in 1881 they acquired a steel works at Voelklingen, which, by 1907, comprised seven furnaces. Besides the usual products of a steel works, the Voelklingen undertaking later specialized in the manufacture of fine steels, which were exported to nearly every country of the world through the intermediary of branches which acted as sales offices. Furthermore, this firm possessed branches for trading in metals and coal, it had a 50 percent interest in coal mines at Aix-la-Chapelle, and owned an important regional bank.

This group of undertakings belonged to a family company comprising 72 members. In reality, the moving spirits were the accused, Hermann Roechling, Ernst Roechling, von Gemmingen-Hornberg, Rodenhauser, and Maier, as well as the son of Hermann, Karl Theodor Roechling, who died in 1944.

At the time of Hitler's accession the Saar territory was under an international regime; hence the NSDAP was not officially created there. The Nazis of the Saar concealed their activities

and secretly collected funds which they sent to the "Adolf Hitler Spende." In the course of 1933 the defendants, or at least Hermann Roechling, transmitted to Hitler RM 30,000; in this way the chief of the firm Roechling was in contact with the NSDAP. It was as a direct result of steps taken by him that Hitler delivered at Niederwald on 27 August 1933, a speech to a public of people of the Saar. He equally maintained relations with the chiefs of the German Army and Navy, with the most important personalities of the Third Reich and with Hitler himself.

After the incorporation into the Reich of the Saar, an event which was due, to a great extent, to the political activities of Hermann Roechling, the defendants no longer concealed their Nazi sympathies; they claimed the right to become members of the Party and indulged in markedly Nazi activities.

The defendant Ernst Roechling was not a member of the NSDAP. He had adopted this attitude in order to be able to continue to live in Paris, from which center he directed world trade in high-grade steel on behalf of the firm of Roechling, and where he stood at the head of the "Deutsche Gemeinschaft" (German Community) and the "Deutscher Hilfsverein" (German Assistance League), secret Nazi organizations in France.

The defendants adopted the "Theory of Living Space," supported Nazi propaganda in Austria and even maintained relations with the Nazi anarchists in this country. In December 1940, the defendant Hermann Roechling addressed to Hitler a memorandum inciting him to invade the Balkans.

The defendant Hermann Roechling maintained relations with Nazi military circles and participated in their work. He engaged in military and economic espionage and participated in the activities of the so-called "Independence for Alsace" movement.

From the economic point of view, the directors of the firm of Roechling, and more especially the defendant Hermann, took a very active part in the preparation of the wars of aggression.

Lacking the iron ore necessary for the mass production of armaments, Goering had turned to the industrialists of the iron industry at the very moment of his entry upon the duties connected with the Four Year Plan (1936) and had promised them, by way of compensation for the sacrifices to which they would be compelled to consent, privileges and advantages which would be theirs, should the issue of the wars which he proposed to wage be successful.

But the shortage of foreign currency prevented the import of foreign ore. The defendant Hermann Roechling, contrary to all

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sound economic principles, urged Goering to consent to the utilization of the poor-quality ores of southern Germany.

This plan was implemented, despite hesitations on the part of certain industrialists. Goering formed a cartel, the "Hermann Goering Works," to be operated under the auspices of the State, to the success of which the defendant Hermann Roechling devoted his attention.

In addition, he offered advice to the Nazi government, advice which was acted upon. His Nazi activities in the preparation of the wars of aggression earned for him the titles of "Wehrwirtschaftsfuehrer" (Military Economy Leader), Adviser to the "Deutsche Bank" and "Wehrwirtschaftsrat" (Adviser on questions of Military Economy).

With the unleashing of the wars of aggression, the zeal of the directors of the firm of Roechling reached its climax. They did everything in their power to bring about the triumph of Hitler but above all their efforts were primarily directed towards their own enrichment.

1. They participated to a very great extent in the economic plundering of the occupied countries, with a view to increasing the military potential of the Reich.

As early as 1919, two of the directors of the firm of Roechling, of whom the defendant Hermann was one, had been condemned by the Courts Martial of Amiens for actions of this nature which were, however, much less serious than those with which they are at present charged.

In October 1939, directly after the invasion of Poland, the iron works "Baldenhuette" and "Koenigshuette" were assigned to the firm of Roechling at the request of its directors, together with the "Koenig" and "Laura" mines. It was not a case merely of provisional administration, but of actual transfer of ownership which was to be made legally valid at the end of the war.

The occupation of Belgium, Luxembourg, and France incited the directors of the firm of Roechling to extend the scope of their enterprises to these countries too.

In June 1940, Hermann Roechling was appointed Reichsbeauftragter (Reich Commissioner) for the iron industry of the Departments Moselle and Meurthe-et-Moselle. The functions of the Reichsbeauftragter, ill-defined for the rest seem, in the beginning, to have been of a purely informatory and supervisory nature. Hermann Roechling exceeded these bounds; he assumed the duties of chief of the works, from which the proprietors were expelled. (He himself informed certain of the proprietors of

their forthcoming expulsion.) He placed a nucleus of German directors, mostly employees of the firm of Roechling, at the head of the administration of these works, took possession of their stocks and books, reopened or closed down the factories at will and, in a word, conducted himself throughout as though he were, in fact, the proprietor.

Like those of Poland, the works of the Department Moselle and of the Grand Duchy of Luxembourg were divided between the major firms of Germany; the firm of Roechling received, at its own request, the Thionville works of the Société Lorraine Miniére et Metallurgique [Mining and Metallurgical Company of Lorraine] and those of the Tréfileries de Reichshoffen [Reichshoffen Wire Mills].

Following threats from the defendant Ernst Roechling, the equipment of the latter mills, which had been evacuated to the unoccupied zone, was brought back to Reichshoffen.

At the end of the war, the German industries were to become legal owners of the enterprises thus assigned to them.

In an attempt to assist the German war effort, the directors of the firm of Roechling, and more especially Hermann, made every effort to force production in the French works of Meurthe-et-Moselle, of which they assumed the management, up to a maximum, compelling the French economy to bear the resultant costs.

The cost price, debited in effect to France, having been set at a lower level than the selling price, and the profit going to the Reich, management in accordance with such methods entailed financial loss.

As a result of steps taken by Ernst Roechling, the ex-Ministers of the Vichy government, Bichelonne and Cathala, arranged that the French Treasury should assume responsibility for the payment of the defendant Reichsbeauftragter Hermann Roechling's debts, amounting to 180,000,000 francs. They likewise arranged that they should be granted by all French factories, with the exception of those of the Department Moselle, a commission of 0.6 percent on the sale of all metallurgical products.

Hermann Roechling's methods of administration were very harsh, sometimes even brutal. He assembled the French directors monthly, generally in the presence of the Gestapo, issued his orders and voiced his complaints.

The directors of the firm of Roechling exerted pressure in order to obtain, for their own profit, the cession of a manufacturing process belonging to the Société d'Electro-Chimie d'Ugine and it was only the attitude adopted by the directors of this company which prevented them from achieving their end.

Despite opposition from the proprietors, they dismantled one of the metal structures of the Société de Saint Gobain and re-erected it in their own factory at Voelklingen.

As early as September 1940, Ernst Roechling had been appointed officer responsible for the removal from France of booty which could be of use to the Saar area, especially machines, scrap iron, alloy constituents, and raw materials of all types.

Not only did the directors of the firm of Roechling take possession of the stocks which they found in the works, which they seized without further ado, but they also brought stocks on the black market, through the "ROGES," a German organization, the task of which was to distribute in the Reich goods obtained on the black market or goods purely and simply seized as so-called booty.

The "Société Française des Forges et Aciéries de la Sarre" and the "Société Anonyme de Vente des Aciers Fins de Lorraine et de la Sarre," the two Paris branches of the Etablissements Roechling, at the head of which stood the defendant Ernst, transacted in France numerous business deals, from which the profit went to the German economy, without the French economy receiving any real compensation.

In his capacity as member of the Board of Directors of the Société de Crédits et d'Investissements," [Credit and Investment Company] Ernst Roechling favored a policy of seizure of the capital of French enterprises, with a view of increasing the military potential of the Reich (Société des Moteurs René, Industrielles Charentaises, Travaux et Mines du Midi, Forestiéres de Provence, Galeries Lafayette, Galerie des Beaux-Arts).

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2. The activities of the directors of the firm of Roechling were not confined to the economic spoliation of the occupied countries. Their leader, the defendant Hermann, proposed the use of "Roechling" projectiles and took an active part in the economic conduct of the wars of aggression.

He offered advice to the various [Reich] Ministers and to Hitler himself. When, in the spring of 1942, the German economy showed signs of exhaustion, caused by insufficient output of iron, due in turn to a transportation crisis, Hermann Roechling proposed methods which would, in his views, remedy the situation.

At the end of May 1942, he became President of the "Reichsvereiningung Eisen" (Reich Association Iron), that is to say, dictator of iron production in the Reich and the occupied countries, having under his command the principal industrialists of Germany (Poensgen, Krupp, Flick, etc.).

He displayed remarkable energy in an effort to augment by all possible means the production of the iron industry.

The defendants themselves sometimes uttered threats. This was especially the case in the affair of Mr. Stroh, director of the Etablissements Schneider, who was deported to Germany, and of whom nothing was ever heard again.

Such an occurrence would have been impossible unless supported by the regime of terror which Germany inflicted upon the occupied countries.

He made the defendants von Gemmingen-Hornberg, Rodenhauser, Maier, and later Ernst Roechling, members of the "Reichsvereinigung Eisen." In 1943 he placed the main French iron industries under the sponsorship of German companies, the so-called "Patenfirmen."

Appointed by Goering to fulfill the functions of Delegate for Iron and Steel Production in the Departments Moselle and Meurthe-et-Moselle, Hermann Roechling, who took advantage of this opportunity to put into operation his long-premeditated plans for the plundering of French property, was moved in addition by the desire to turn the metallurgical industry of these two departments to the service of Hitler, and this with complete disregard for the people of Lorraine.

Determined to Germanize the people of Moselle, Hermann Roechling took upon himself to expel the French directors from iron producing enterprises. With the full accord of Gauleiter Buerckel, moreover, he issued directives for the transfer to the Reich of workers from Moselle with their families, the workers having been selected from among the political suspects. He later adopted similar methods in Luxembourg.

The metallurgical workers who remained behind were constantly submitted to rigorous control, imposed in an attempt to obtain from them the maximum effort for the benefit of Reich war production. The ill treatment meted out to the personnel of Karlshuette, a works which was plundered by the firm of Roechling, was particularly odious.

A special police brigade, directed by an officer of the SS, and an "Adverse Reports Tribunal" were instituted in the works; the workers were punished and even interned in concentration camps for the most trifling of offenses. The plight of the foreign workers there, Russians for the most part, was lamentable.

The living and working conditions of the foreign workers employed in the other metallurgical plants of Lorraine over which Hermann Roechling exercised double control, first in his capacity as Reichsbeauftragter and second in his capacity as president of the Reichsvereinigung Eisen, were not more enviable.

The defendants von Gemmingen-Hornberg, Maier, and Rodenhauser were on the Managerial Committee Southwest of the Reich Association Iron (Reichsvereinigung Eisen) which in particular had jurisdiction over the Moselle, and they constantly approved, in fact suggested, the coercive measures taken against labor in this department.

In the neighboring Department Meurthe-et-Moselle, Hermann Roechling, as Reich Delegate for Metallurgical Production, distinguished himself on the one hand by his severe measures against workers suspected of sabotaging the German war effort and, on the other hand, by shutting down or closing factories, the last measures having been provoked by the removal of material destined for Germany. Thus the workers of Meurthe-et-Moselle, who had been forcibly rendered unemployed, were placed at the disposal of the Compulsory Labor Service, which directed them to the Reich, in particular to the Voelklingen Steel Works, where they came under the heel of Hermann Roechling.

In his capacity as president of the Reich Association Iron, Hermann Roechling, having as his sole object the development of German war production, allowed no scruples to stand in his way and pursued the policy of forced labor on the largest possible scale. Through the channels of his organization there passed all the requests for foreign labor that were made by the firms forming the Association Iron. Hermann Roechling, who not content with merely passing on these requests for manpower, often on the contrary showed his authority by instigating them, passed them on to the Speer Ministry for Armaments, which submitted them to Sauckel, the Plenipotentiary for Labor. The demands of the president of the Reich Association Iron were met by deportations of foreign workers on a huge scale to the Reich—200,000 according to actual admissions made by the chief defendant—workers belonging almost exclusively to nations at war with Germany and her satellites.

Hermann Roechling, flouting international conventions, besides suggested making use of Soviet prisoners of war as well as taking a census of and using French metal workers in captivity.

In his lengthly reasoned reports intended for all the relevant authorities on this question, that is Hitler, Field Marshal Keitel, Sauckel, and Speer, Hermann Roechling requested and appealed for recourse to the Compulsory Labor Service in France, Belgium, and Holland; and for the incorporation into combat formations within a German framework of a considerable proportion of the population of these occupied countries. The institution of Compulsory Labor Service had already been one of the dominant ideas of the subsection Southwest of the Reich Association Iron

and of the Assembly of Commissioners of the iron industry in Meurthe-et-Moselle, two organizations of which Hermann Roechling's codefendants were members.

For all this manpower composed of compulsorily recruited, deported, and interned people and of prisoners of war, recruited in defiance of international conventions and rules of war, Hermann Roechling as chairman of the Reich Association Iron and with all the authority this office conferred upon him, proposed a method of treatment that was devoid of any humanity and which went as far as internment in concentration camps. In this he associated himself with the policy of systematic exploitation so dear to Sauckel!

Hermann Roechling and the directors of the Voelklingen Steel Works applied these principles to the foreign workers employed in their firm. In July 1944 there were in the Voelklingen works about 6,000 foreign workers, of which about 1,200 were prisoners of war. Forced to do exhausting labor, constantly persecuted by the factory police who were in the main SS, exposed to ill treatment, insufficiently fed, and obliged to live under the most primitive sanitary conditions, the foreign workers found themselves dragged before a special factory court for the slightest infringement of the inflexible working discipline. The most frequent penalty pronounced was that of internment in the Etzenhofen penitentiary camp which was created exclusively for the Roechling factories by the Managerial Committee acting in complete unanimity with the Saarbruecken Gestapo service. In this camp, the internees experienced the worst kind of brutality and the most inhuman treatment possible. These facts have been proved both by testimonies from former internees, as well as by the statements of former members of the guard, by the testimonies of inhabitants of the village of Etzenhofen and the doctors in the factory.

These living and housing conditions reserved for the foreign workers allocated to the Roechling works had as a result an exceptionally high death rate which did not escape the notice of the German officials directing manpower. The testimonies collected and the documents seized show that the Managerial Committee and in particular Director Rodenhauser, who was specially responsible for questions of manpower, showed no opposition at all when it was a question of adopting the coercive measures mentioned above and in particular of creating the penitentiary camp. This systematic exploitation of foreign workers was to produce substantial profits and royalties, mostly emanating from the sale of war material, for the shareholders and directors of the Voelklingen Steel Works.

The actions for which the directors of the firm of Roechling are made responsible are not attributable to any aberation resulting from an ardent patriotism or an unlimited devotion to national socialism. The fundamental reason for their actions lay in their desire to make themselves rich by extending their various enterprises at the expense of the countries invaded by the Reich.

In fact their chief, Hermann Roechling, not satisfied with their having at their disposal only a small share of the booty, protested to Goering, stressing the services he had rendered in the wars of aggression, and demanding more. He endeavored to break up the "Etablissements de Wendel," which had been marked down to the "Hermann Goering Works," in order to secure some share of it, and claimed the coal and iron mines of the Department Moselle.

The directors of the firm of Roechling expected to get as loot, not only the factories of the Departments Moselle and Bas-Rhin, but also of the Department Meurthe-et-Moselle.

Finally, they expected to acquire for their personal use, not for the Reich, the Prerrin processes.

Individual Responsibilities of the Defendants

I

Hermann Roechling, born at Saarbruecken on 12 November 1872. Member of the Nazi Party—Chief of the industrial and commercial trust called "Roechling'sche Eisen und Stahlwerke"—Military Economy Leader (Wehrwirtschaftsfuehrer), Military Economy Councillor, Reich Commissioner for the iron and steel works of Moselle and Meurthe-et-Moselle. Armaments Commissioner. President of the Reich Association Iron (Reichsvereinigung Eisen). Member of the Council of the Reich Bank, Commercial Councillor for Prussia.

1. Encouraged and contributed to the preparation and conduct of the wars of aggression.

2. With the object of increasing the war potential of the Third Reich—

a. Helped to bring about the economic enslavement of the occupied countries.

b. Participated in the systematic pillaging of public and private property.

c. Employed under compulsion nationals of countries at that time occupied, prisoners of war, and deported persons, who were subjected to ill-treatment by his orders or with his consent.

d. Encouraged the deportation of nationals from occupied countries, with the object either of compelling them to work or of

enrolling them forcibly to fight against their native country or the powers at war with the Reich.

3. Seized private or public property in the occupied countries.

II

Ernst Roechling, born on 28 March 1888 at Ludwigshafen. Member of the Aufsichtsrat of the Trust "Roechling'sche Eisen und Stahlwerke". Deputy of Reich Commissioner Hermann Roechling, and Laenderbeauftragter of the Reich Association Iron in France.

1. Encouraged and contributed to the preparation and conduct of the wars of aggression.

2. With the object of increasing the war potential of the Third Reich—

a. Contributed to the economic enslavement of the occupied countries.

b. Took part in the systematic pillaging of public and private property.

3. Seized public and private property in the occupied countries.

III

Hans Lothar von Gemmingen-Hornberg, born on 19 January 1893 at Metz. Member of the Nazi Party. Member of the Aufsichtsrat of the Trust "Roechling'sche Eisen und Stahlwerke". Representative of the Reich Association Iron for the External Branch Office Southwest, Economic Delegate for the Saar region.

1. Encouraged and contributed to the preparation and conduct of wars of aggression.

2. With the object of increasing the war potential of the Third Reich—

a. Helped to bring about the economic enslavement of the occupied countries.

b. Took part in the systematic pillaging of public and private property.

c. Employed under compulsion nationals from the countries then occupied, prisoners of war, and deported persons, who were subjected to ill-treatment upon his orders or with his consent.

3. Seized public and private property in the occupied countries.

IV

Albert Maier, born on 9 May 1895 at Bad Wimpfen. Member of the Nazi Party. Member of the Managing Directorate and Financial Director of the Trust "Roechling'sche Eisen und Stahlwerke". Representative of the Reich Association Iron for the External Branch Office Southwest.

1. Encouraged and contributed to the preparation and conduct of the wars of aggression.

2. With the object of increasing the war potential of the Third Reich—

a. Helped to bring about the economic enslavement of the occupied countries.

b. Took part in the systematic pillaging of public and private property.

c. Employed under compulsion nationals from countries then occupied, prisoners of war, and deported persons, who were subjected to ill-treatment at his orders or with his consent.

3. Seized public and private property in the occupied countries.

V

Wilhelm Rodenhauser, born on 17 May 1880 at Elmshorn, Holstein. Member of the Managing Directorate and Technical Director of the Trust "Roechling'sche Eisen und Stahlwerke." Representative of the Reich Association Iron for the External Branch Office Southwest.

1. Encouraged and contributed to the preparation and conduct of the wars of aggression.

2. With the object of increasing the war potential of the Third Reich—

a. Helped to bring about the economic enslavement of the occupied countries.

b. Took part in the systematic pillaging of public and private property.

c. Employed under compulsion nationals from the countries then occupied, prisoners of war, and deported persons, who were subjected to ill-treatment at his orders or with his consent.

3. Seized public and private property in the occupied countries.

These facts constitute a crime against peace, war crimes, and crimes against humanity in the sense of Law No. 10 of the Control Council, Berlin, of 20 December 1945.

In consequence, the above-named will be summoned before the General Tribunal of the Military Government of the French Zone of Occupation in Germany, having its seat at Rastatt, within the minimum space of one month from the date of serving the present indictment.

Saarbruecken, 25 November 1947

[Signed] C. GERTHOFFER

CHARLES GERTHOFFER

Deputy Procurer de la République at the Tribunal de la Seine, Delegate for the Government Commissioner at the General Tribunal of Military Government of the French Zone of Occupation in Germany.*

JUDGMENT

GENERAL TRIBUNAL OF THE MILITARY GOVERNMENT OF THE FRENCH ZONE OF OCCUPATION IN GERMANY

JUDGMENT RENDERED ON 30 JUNE 1948 IN THE CASE versus *HERMANN ROECHLING AND OTHERS CHARGED WITH CRIMES AGAINST PEACE, WAR CRIMES, AND CRIMES AGAINST HUMANITY*

The General Tribunal

Presiding Judge:

M. Pihier, Counsel of the Court of Appeals, Paris, France; former President of the Tribunal at Versailles.

Associate Judges:

Professor Hornbostel, France.

Judge Tschiember of the Court of Appeals, Colmar, France; Commandant of Baden; former Judge Advocate in the French Navy.

Judge Lévy, Alsatian Superior Courts.

Judge Elleboudt, Judge of the Tribunal of First Instance in Brussels, Belgium.

Colonel Baron van Tuyll, Attorney General at the Court of Appeal of the Netherlands.

Alternate Judge:

Mr. Roger Toillon, Legal Adviser, Justice Department, French Military Government in Germany.

Secretary General:

M. L'Hermitte.

In view of Law No. 10 of the Allied Control Council, dated 10 December 1945, relating to the punishment of persons guilty of war crimes, crimes against peace and against humanity;

In view of Ordinances Nos. 20 and 36 of the French Supreme Commander in Germany, dated 25 November 1945 and 25 February 1946, relating to the repression of war crimes, crimes against peace and against humanity;

* Other prosecution counsel assisting M. Gerthoffer were M. Doll (of France), M. Kirschn (of Belgium), and Major Plawski (of Poland). Defense counsel were composed both of French and German lawyers. The principal German defense counsel was Dr. Otto Kranzbuehler who had acted as defense counsel in three of the Nuernberg trials, the IMT, Flick, and Farben cases.

Whereas within the meaning of the terms of these statutes, the Military Government Tribunals of the French Zone of Occupation in Germany are competent to judge all persons other than French nationals who have rendered themselves guilty of crimes against peace, war crimes, and crimes against humanity;

Whereas Hermann Roechling, Ernst Roechling, von Gemmingen-Hornberg, Maier, and Rodenhauser are charged with crimes against peace, war crimes, and crimes against humanity, by virtue of an indictment, dated 25 November 1947, which was communicated to them the same date; that in the course of the proceedings, namely, on 15 April 1948, the public prosecutor stated that he was dropping the charges against Ernst Roechling, von Gemmingen-Hornberg, Maier, and Rodenhauser on the count of crimes against peace, and that in his closing statement the charge of crimes against humanity was not retained (as far as these three are concerned);

Whereas the public prosecutor, in the session of 24 May 1948, stated the facts with which he definitely charged the defendants in the course of the proceedings;

Whereas the London Charter of 8 August 1945, which is incorporated in Law No. 10 mentioned above, defines the crimes in question as follows:

(*a*) Crimes against peace, that is to say, the direction, the preparation, the unleashing, or the waging of a war of aggression or a war of violation of international treaties, agreements, or assurances or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(*b*) War crimes, that is to say, the violation of the rules and customs of warfare. These violations include, but are not limited to, murder, mistreatment or deportation for slave labor, or for any other purpose, of civilian populations from occupied territory, murder or mistreatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

Whereas Article II, paragraph 2, of Law No. 10, states concerning crimes against peace that any person is responsible who has held a high civilian or military position in Germany or an important position in the financial, industrial, or economic life of Germany or its allies;

Whereas there is no cause to raise in this judgment the question again but to consider as permanent certain principles which have been established by the judgment of the International Military Tribunal for major war criminals of 1 October 1946, in par-

ticular the criminal character of wars of aggression, and the legal right of prosecuting those who are responsible therefor;

With regard to Hermann Roechling

Whereas Hermann Roechling, aged 75, took over in 1898 the technical direction of the steel plants at Voelklingen which his father had bought in 1881 and which were formed into a corporation in 1886 under the name of "Roechlingsche Eisen und Stahlwerke Gesellschaft"; that in 1910 he took over the general direction of the business on the death of his father; that the steel plants at Voelklingen are one of the most important steel works in the territory of the Saar, producing 700,000 tons of steel per annum, and possessing numerous branches in Germany and abroad, especially in Europe and America, for the exploitation of refined steel;

Whereas Hermann Roechling always revealed himself as a militant subscriber of National-Socialist policy, that he joined the NSDAP in 1935, after having agreed with Hitler that it was not expedient to introduce the Nazi Party into the Saar before the reinclusion of the territory into the Reich;

Whereas in the indictment Hermann Roechling is charged with having participated in the preparation of wars of aggression, that in this respect it is especially of account that he is alleged to have been present at several secret conferences with Goering in 1936 and 1937, which were held in connection with the Four Year Plan, and that it is alleged he had in the territory of Baden strongly pushed the utilization of poor-grade ore which did not pay commercially;

Whereas it is correct that Hermann Roechling was present at several of these conferences, which he does not deny, but states that the purpose of these conferences was not solely the rearmament of the Reich, but also the economic development of the country;

Whereas, moreover, the fact that Germany was preparing its rearmament does not necessarily imply—as the International Military Tribunal has stated—that its aim was to launch wars of aggression; that Roechling states he never heard projects of this nature being discussed during such conferences;

Whereas the exploitation of poor-grade ore may be justified by economic necessities, it does not infer, even from the point of view of rearmament, the unavoidable obligation to unleashing wars of aggression; that Germany could have introduced the utilization of poor-grade ore in order not to be dependent on imports which in time of war would probably have ceased, and would have made her dependent on foreign countries;

Whereas the prosecution does not show proof that Hermann Roechling was informed of the wars of aggression which were eventually undertaken by the German Government, or that he participated in the preparation of such wars; that this count of the indictment must therefore be set aside;

Whereas it is proper to examine whether Hermann Roechling participated in the conduct of the wars of aggression;

Whereas after the invasion of Poland in 1939, of Denmark, Norway, Belgium, Luxembourg, the Netherlands in 1940, of Yugoslavia, Greece, and Russia in 1941, no one could any longer have any doubts concerning the purpose of the wars unleashed by the government of the Reich, that the aggressive character of these wars has moreover been recognized by the aforesaid judgment of the International Military Tribunal;

Whereas Hermann Roechling stepped out of his role of industrialist, demanded and accepted high administrative positions in order to develop the German ferrous production;

Whereas actually in 1940, Hermann Roechling accepted the positions of "Generalbeauftragter" (Plenipotentiary General) for the steel plants of the Departments Moselle and of Meurthe-et-Moselle Sud; that by virtue of these positions he applied total seizure of these enterprises with an annual capacity of more than 9 million tons, and employing more than 200,000 people; that after the allocation of plants effected by Goering in 1941, Hermann Roechling retained his hold on all these enterprises in his capacity as "Generalbeauftragter," attempting by all possible means to increase the production of these plants designated for the war effort of the Reich;

Whereas at the beginning of 1942 the steel production in Germany being fairly low, Hermann Roechling wrote to Goering in order to advise him of the situation and to propose remedies to him, in particular an annual increase in the production of from 600,000 to 700,000 tons, informing him that he regretted he was unable to apply these remedies through lack of sufficient authority and that he offered his services in order to save the situation; that he also wrote:

> "* * * based on a study of foundries, one discovers what can be done in the long run. I can indicate with hopes of success the road that must be followed."

Whereas on 30 April 1942 Hermann Roechling made new proposals to Speer, the Minister of Armament, with a view to increasing the production of iron;

Whereas on 29 May 1942 Goering appointed Hermann Roechling President of the "Reichsvereinigung Eisen" (RVE—Reich Asso-

ciation Iron), an association the purpose of which was to direct the war effort of the Reich in order to coordinate and intensify the ferrous exploitation in Germany; that on 18 June 1942, his powers were extended to all the countries occupied by the Reich with the title of "Reichsbeauftragter" (Reich Commissioner); that this appointment placed under his direction the occupied territories of the West, Norway, Alsace, Lorraine, Luxembourg, Styria, southern Carinthia, Bohemia, Moravia, Poland, the Ukraine, and Serbia, with extensive authority to take all measures necessary to increase the production;

Whereas in a speech made at Knuttange (Moselle) on 10 June 1942, Roechling announced his program and his full dictatorial powers; that he had as vice presidents of the "RVE," Krupp von Bohlen [und Halbach] and Rohland, and that among the members of the managing board there were some of the biggest German steel industrialists (Ernst Poensgen, Zangen, Flick, etc.), and that in this manner Hermann Roechling was at the head of the German steel industry;

Whereas in his position as dictator for iron and steel in Germany and the occupied countries, Hermann Roechling proved to be of particularly great zeal and showed himself extremely hard toward the directors of occupied plants; that with the support of the regime of terror which Germany exercised over these territories, he demanded of them that they work in order to increase the armament of a power at war with their own country; that this is shown by the testimony of numerous witnesses heard (in particular, Aubrun, Vicaire, Mercier, Perrot);

Whereas due to his talents as technician and also to the pressure which he exercised over the industry of occupied countries, Hermann Roechling was able to eliminate the drop in ferrous production which had set in at the beginning of 1942, as it can be seen from a report dated 13 November 1945,* written by General Thomas, Chief of Military Armament Office of the Reich; that this report states in particular that the role of the Ministry for Reich Economics had been eliminated as far as the production of iron and steel was concerned to the advantage of the RVE, as soon as this organism had been created;

Whereas the actions of Hermann Roechling undisputedly contributed in a large measure to the continuation of aggressive wars during three years; that there are grounds to retain against him the count of undertaking aggressive wars;

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* General Thomas completed a report in the latter part of 1944, and an affidavit concerning this report was executed by General Thomas on 13 November 1945.

Extracts from this report are reproduced as Document 2353-PS, Prosecution Exhibit 941 in section VI B, and as Document 2353-PS, Prosecution Exhibit 1049 in section VI H, volume XII, this series.

Whereas it is necessary to examine the counts retained against Hermann Roechling concerning war crimes; that there is cause to ascertain that after the beginning of the aggressive wars, Hermann Roechling, stepping out of his role of industrialist, after having demanded high administrative and leading positions concerning the steel exploitation of the Reich, concentrated his activity to develop the production of steel to the highest possible extent;

Whereas Hermann Roechling had solicited the duties of "Generalbeauftragter" for the steel plants of Moselle and Meurthe-et-Moselle; that he wrote in fact to Buerckel on 28 December 1940 in order to thank him for "having helped him to obtain a position which was highly satisfactory" to him; that going beyond his duties of control and information, he behaved as if he was absolute owner of these enterprises, partaking in expulsion measures undertaken against the owners, appointing German directors to replace the rightful owners;

Whereas during a first period from June 1940 to February 1941, Hermann Roechling carried out a complete seizure of the steel plants of the Moselle and the Meurthe-et-Moselle Sud, which represented 65 percent of French production, totalling an annual iron capacity of 9 million tons of liquid steel and employing more than 200,000 workers; that in these functions Hermann Roechling did his utmost to repair the plant as rapidly as possible in order to increase the war potential of the Reich; that he did not hesitate to liquidate important quantities of merchandise in order to obtain realizable assets without furnishing to the real owners a proper inventory;

That during a second period from February 1941 to March 1944, after Goering had ordered the allocation of the Moselle steel plants to various German firms, Hermann Roechling was allocated the installations of the "Société Lorraine Minière et Métallurgique" at Thionville (Karlshuette) over which he received an option to purchase while continuing to exercise his functions of "Generalbeauftragter" over the plants of Moselle and Meurthe-et-Moselle Sud, which was over 12 plants in the most productive region of France;

That during this period the plants were managed at a loss, the selling price of the steel being below that of the production, that Roechling was forced to borrow 180 millions from a company subserviant to the Germans, the Société de Crédits et d'Investissements," in order to cover up the loss and that he obtained from Bichelonne and Cathala, Ministers of the Pétain government, that the French Government would take over the responsibility of repaying this sum;

That during a third period, from March 1944 to the liberation, the plants were returned to their owners but remained under the severe control of Hermann Roechling who, bearing no longer the financial responsibility of the plants, forced them nevertheless to produce for the German war effort;

Whereas, though it is impossible to name precisely the total of tons of steel products thus put at the disposal of the Reich war effort, it is proper to remember that during the month of March 1944 the Germans celebrated the extraction of the hundredth million ton of ore from the iron mines of eastern France;

Whereas the exploitation of these plants was accomplished solely at the expense of occupied countries and the witness Delacotte has named the figure of approximately 1 billion francs as the deficit due to Hermann Roechling's management, which was charged to the French Treasury;

Whereas the Reich war potential almost exclusively benefited from this exploitation, that Hermann Roechling in a memorandum to Goering on 20 January 1942, stated himself that iron and coal could be deducted only in "homeopathic" quantities in the occupied countries from the war economy alone and be put at the disposal of specific needs of these countries;

Whereas Hermann Roechling developed in the occupied countries a program of removal of machinery in order to transfer it to Germany or to Russia, and to put it in production for the Reich war effort, that on 23 December 1941 he wrote to an officer who was in Russia—

> "I believe that it would be advisable to remove from the occupied regions in the Meurthe-et-Moselle and eventually from Belgium and the North of France the necessary installations in order to set going the plants in the regions where you are at the moment. I already proposed to Pleiger some time ago to remove the entire rolling mill of Joeuf to Mariupol";

Whereas as a matter of fact the essential parts of the rolling mills of Joeuf were sent to the Ukraine in 1943; that that represented considerable material; that it was loaded on 42 railroad cars; that the plant at Joeuf is at this date immobilized due to this fact; that General von Stuelpnagel, in a secret report dated 8 October 1942, stated to the Ministry of Armament the difficulty he had to obtain from the French the consent to transfer to the East the electrical machinery of the rolling mills, and added that, thanks to the "decisive collaboration" of Hermann Roechling, the French Government had consented to the dismantling of the Joeuf enterprise; that the defendant asserts that he had thus secured the agreement of a government which he considered as the legal

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government of France; that he, however, could not fail to know that this government, whether legal or not, applied the German policy in France in a servile manner and committed treason against its country in dancing to the tune of the enemy; that in addition this agreement with the Pétain government was not carried through and that the removal of this material became the object of protests, purely *pro forma* in fact, from the point of the French Government, as a result of the failure of this agreement; that there is cause to establish the leading role played by Hermann Roechling in this operation;

Whereas, in addition, an electric motor was removed from the Joeuf plant and taken to Karlshuette near Thionville, which Hermann Roechling considered as an object which would be definitely his own;

Whereas the rolling mill of Ymuiden (Holland) was dismantled at the suggestion of Hermann Roechling, in order to be sent to Watenstedt (Brunswick) in July 1943, as it appears from the testimony of M. Perrot;

That these are facts characterized as economic plunder;

Whereas Hermann Roechling is being charged with having personally profited from systematic plunders which were accomplished in order to augment the war potential of Germany;

Whereas immediately after the occupation of Poland, the firm Roechling had obtained the management of the Laura and Koenigshuette plants; that contrary to what he claims, Hermann Roechling had demanded this mission, as it is proven by an affidavit of the Supervisory Board of Voelklingen, dated 17 November 1939; that he made no secret of his desire to obtain later the ownership of these plants; that he in fact wrote in a letter, dated 19 December 1939, addressed to Pastor [a Roechling official]:

> "We shall only then succeed in reaching our objective, that is, to obtain definite possession of these enterprises, if we act in the capacity of interpreters of National-Socialist principles in maintaining these in the strongest manner and in practicing them. We must also prove that we are the faithful supporters of the Fuehrer's policies, that is to say, that we must follow here a policy of Germanization, as much as that is possible * * *. If we do not conduct ourselves in this manner, even though we certainly will obtain the management of the enterprise, it is at least doubtful that we would be able to obtain the actual ownership of these enterprises.";

Whereas in fact it is established that the firm Roechling took possession of these two plants from the month of May 1940 to 1 October 1941, and that after 18 months Hermann Roechling did

not give up this exploitation except in order to assure the exploitation of the steel plants of occupied France over which he had exercised complete seizure and which he coveted;

Whereas if the desire which he thus manifested to become, after the war, owner of these Polish plants is not sufficient to characterize it as a personal appropriation, it is necessary to consider his efforts in the Moselle from a different standpoint;

Whereas from the moment of the invasion of France, Hermann Roechling, going beyond his functions as "Generalbeauftragter," personally accomplished a complete seizure of the plants of the Departments Moselle and Meurthe-et-Moselle Sud, and particularly the establishments of the "Société Lorraine Minière et Métallurgique," known as "Karlshuette" at Thionville;

That in February 1941, Goering ceded to him the management of this plant together with the right to purchase it in case of a Reich victory;

Whereas he protested vehemently against this allocation which he considered insufficient, by reminding him of his accomplishments (his struggle against the French dating from 1919, his utilization of poor-grade ore, his action in favor of the creation of the "Hermann Goering Works" in face of the unanimous opposition of German industry;

That in fact he behaved as owner of these plants, as if this property had been transferred to him; that on 16 December 1940, Raabe, the "Generalbeauftragter" of the iron mines of eastern France, was in a position to write to State Secretary Koerner that Hermann Roechling desired to obtain the mines of Hayange in order to consolidate them within "his" Karlshuette, that he had transported an electric motor from the Joeuf plant in spite of the opposition of the owner;

Whereas on 2 May 1943 he founded a company known as "Eisen und Stahlwerke Karlshuette" in Thionville, the purpose of which was the manufacturing of iron and steel;

That this maneuver of appropriation culminated in the taking —without the consent of the rightful owner—of a mortgage on the properties of the plants which profited particularly the Roechling Bank of Saarbrucken, which was entirely subservient to the Roechling Company of Voelklingen and of which he was the moving spirit;

Whereas these plants which had during 4 years been exploited for the purpose of increasing the Reich war potential, could not be returned to their rightful owners until after the liberation of the Department Moselle, and that under these circumstances, Hermann Roechling thus participated in the systematic plunder of occupied countries for his personal profit;

Whereas it is in vain that the defendant claims that having built four blast furnaces in this plant in 1907, he had the right to consider himself as owner of these plants after the *de facto* annexation of the Department Moselle in 1940;

That in fact these four blast furnaces had been seized and sold under the reparations clauses of the Treaty of Versailles, and that the defendant had received from this sale an indemnity from the Reich government—that on the other hand no treaty involving territorial cessions had existed between France and Germany since the events of the month of June 1940—the private properties of the Departments Moselle, Bas-Rhin, and Haut-Rhin were still under the protection of the Hague Convention and as such could be neither seized nor confiscated;

Whereas it is equally in vain that Hermann Roechling maintains that he had invested large sums in these plants, while in fact, even admitting that this should be the case, it would in no way modify the responsibility of the defendant, since expenses incurred for an object obtained by means of a criminal act or an offense do not eliminate the fraudulent character of such a possession;

Whereas Hermann Roechling also seized the plants of Reichshoffen (Bas-Rhin) belonging to the "Société des Tréfileries Wurth"; that the defendant recognized that from the month of June 1940 on, one of his employees named Giesecke had taken possession thereof; that at the beginning of 1941 the firm Roechling obtained from the German authorities a lease with promise of sale of the above-mentioned plants, that these were purchased a while later and that a company with limited liability, so-called "Drahtindustrie" was created for its exploitation;

Whereas it was only after the liberation of the Department Bas-Rhin that these plants could be returned to their rightful owners, and that as a matter of fact important quantities of industrial material were found missing, having been sent to Germany;

Whereas it is proven that Hermann Roechling had obtained the management and later had acquired the property of this plant in violation of the terms of the Hague Convention;

Whereas in order to be able to manufacture a certain type of war material in his plants at Voelklingen, a metal structure weighing 950 thousand kilograms which belonged to the "Société de Saint Gobain" was dismantled from this company's plants at Cirey (Meurthe-et-Moselle) and moved to Voelklingen again in spite of the objections of its owners;

Whereas the defendant maintains that this represented a requisition made by the German authorities;

But, whereas it is established from a letter of 12 May 1942 that this requisition was carried out only after the stalemate reached by the private negotiations made between the "Société de Saint Gobain" and the firm Roechling and that at the very time when the halls were being dismantled, on 9 July 1941, the owners were writing to Hermann Roechling to protest against a requisition which had been effected at his request and for his profit;

Whereas these facts constitute a fraudulent acquisition of private goods belonging to inhabitants of occupied countries and a violation of the Hague Convention;

Whereas Hermann Roechling is charged with having lavished advice on the Nazi government in order to utilize the inhabitants of occupied countries for the war effort of the Reich;

Whereas in a report, dated 17 July 1942, the president of the RVE suggests to the Chief of the Prisoner-of-War Affairs attached to the Wehrmacht to discover in the Stalags French or Belgian prisoners of war who were metallurgical specialists, in order to assign them to German industry;

Whereas in a memorandum, dated 12 August 1942, Hermann Roechling, as president of the RVE, requested from Speer, in order to augment steel production, a supplement of 45,000 foreigners; that in a report of 15 August 1942 he reminds him that 5,000 prisoners of war and 45,000 Russian civilian workers were to be put at his disposal; that he requests that the Saar and the Ruhr should be supplied with prisoners of war first of all; that in a report dated 5 October 1942 he advises Speer that 150,000 Russian prisoners of war are hardly sufficient to maintain the production quota of that time;

Whereas on 8 February 1943 Hermann Roechling sent to the Nazi leaders in Berlin a memorandum requesting that he obtain the utilization of Belgian labor in order to develop German industry; that he suggests in this connection that youths of 18 to 25 should be drafted to obligatory work under German command —which would mean the utilization of approximately 200,000 persons—and that he added:

> "If a large number of young Belgians are in our hands in close formations, they will also serve as hostages for the good conduct of their parents."

Whereas in a report, dated 4 January 1943, Hermann Roechling requested that negotiations be started immediately in order to obtain a considerable number of Russian youths of about 16 years of age for labor in the iron industry;

Whereas in a memorandum dated 8 February 1943, addressed to Field Marshal Keitel, Hermann Roechling requested the taking

of a general census of French, Belgian, and Dutch youths in order to force them to work in war plants or to draft them into the Wehrmacht, together with the promulgation of a law which would make work obligatory in the occupied countries;

Whereas at the beginning of 1943 Hermann Roechling requested from Speer that obligatory work be instituted in France, for men as well as for women, in order to achieve the envisaged increase in the plant production in occupied territories;

Whereas it is thus proven that Hermann Roechling in his important function as president of the RVE or as Reichsbeauftragter incited the Reich authorities in the most insidious manner to employ inhabitants of occupied countries and prisoners of war in armament work, with complete disregard for human dignity and the terms of the Hague Convention;

Whereas there is cause to consider these not as a particular war crime but as a phase of its activity involved in the conduct of wars of aggression, and that the facts listed above must be considered together with those with which he is charged under crimes against peace;

Whereas concerning the purchases of metallurgical products made in Paris by the "Société Lorsar" and the purchases of various types of merchandise effected by the "Société ROGES," the prosecution does not state with sufficient exactitude the nature and importance of such operations nor any reference to the manner in which the actual operations were paid for, which would serve to inform the Tribunal whether these are operations of economic plunder or not; and that therefore there is no reason to retain this count of the indictment;

Whereas the prosecution accuses Hermann Roechling of having exercised great severity in order to force the prisoners of war and deportees working in his plants to perform their work, and of having tolerated or encouraged inhuman execution of punishments which were meted out;

Whereas if Hermann Roechling employed prisoners of war and deportees who were sent to him—just as they were sent to other industrialists—as a result of a request for labor directed to competent authorities, there is cause to consider under what conditions this employment took place; that on this subject the prosecution has furnished corroborative depositions from workers, doctors, medical orderlies, and guards;

Whereas it results from these depositions that food was absolutely insufficient, that the workers were obliged to exchange their own personal possessions and their clothing for food; that there were weeks on end without meat, that many workers became ill, were covered with open sores, that some collapsed from

weakness and had to be transported without delay to the hospital; that Immisch, charged with labor inspection, has declared that the condition of the workers in Roechling's firm was catastrophic, particularly from the point of view of food, that sanitary conditions were very poor, that the workers were covered with lice, that they were beaten for trifles, that the foreign workers were shamelessly exploited, receiving only insufficient food for very hard work;

Whereas the doctors of the camp have made statements which confirm the deplorable sanitary state of these workers and the illnesses which resulted from it: tuberculosis, furunculosis, illnesses of the digestive system, mange, etc.;

Whereas the prisoners of war suffered a particularly rigorous treatment at Roechling's hands in that they were employed in the most difficult jobs, such as work in the rolling mills, coke, blast furnaces, electro-furnaces, pitch, and that for these exhausting labors they received only the most insufficient nourishment; that the prisoners of war were able to exist only with the help of Red Cross packages or those sent by their families, and that since the Italian and Russian prisoners obtained none of these, they were decimated by illness; that a witness has evaluated the death rate among prisoners of this category at 50 percent;

Whereas the plant police consisted of a protective service, known as the "Werkschutz"; that in April 1943, by agreement between directors of the firm Roechling and the Gestapo, a "Schnellgericht" (Summary Court) was created in the plant, whose purpose was to punish breaches of discipline of foreign workers (repeated absences, repeated lateness, leaving place of work, refusal to perform supplementary work, unruly conduct); that about the same time there was created at a distance of about 15 kilometers at Etzenhofen, a punishment camp, by agreement between the directors of the Roechling firm and the Gestapo; that the foreigners sentenced by the "Schnellgericht" were sent there for a maximum of 56 days; that those sentenced who had to spend the night at Etzenhofen were brought back in the morning to the Roechling plant and returned in the evening to this camp; that the principal advantage for Hermann Roechling in the creation of this camp was that the workers so punished, who originally were turned over to the Gestapo and were temporarily or permanently lost to him, continued nevertheless to work in his plant;

Whereas it results from corroborative depositions made by former workers in the camp, by doctors, guards, and inhabitants of the village that the conditions under which these men under

punishment existed were inhuman; that after having slept just a few hours, the prisoners were often forced to perform gymnastics in the middle of the night, usually stark naked, that afterwards they were led to the Voelklingen plant, where they were put to work in the most difficult tasks, particularly at the coke ovens and the handling of tar, for 10 hours at a stretch, on Sunday as well; that in the evening at 1800 hours they were marched back to the camp where, on certain days, they were forced in addition to perform punishment exercises, such as crawling, running, and jumping; that dogs had been trained to bite the workers if they walked instead of running; that the guards often struck the prisoners without cause; that the latter were often locked up in a cave which was half full of water; that the food was absolutely insufficient for these men who were forced to perform such exhausting labor and exercises and consisted of a bit of bread and a soup which usually had not even vegetables in it; that the inhabitants of Etzenhofen were indignant to see these exhausted individuals walk through the streets, often fainting, recognizable by their prison clothing with blue and white stripes;

Whereas Roechling is not accused of having ordered this abominable treatment but of having tolerated it and of not having done anything in order to have it modified;

Whereas Hermann Roechling states in his defense that he did not know the conditions of existence of these workers at the Voelklingen plant and particularly of those of the Etzenhofen camp, since from 1942 on his duties as president of the RVE were too exhausting to allow him to come often to Voelklingen and that therefore if he did not know of this bad treatment, the excessive labor, the insufficient food mentioned above;

But whereas his important duties which he had in the administration of the Reich did not prevent him from taking great care of his interests as an industrialist at Voelklingen; that it was his duty as the head to inquire into the treatment accorded to the foreign workers and to the prisoners of war whose employment in his war plants was, moreover, forbidden by the rules of warfare, of which fact he must have been aware; that he cannot escape his responsibility by stating that the question had no interest for him; that his double position as chief of an important industry and as president of the RVE would have given him the necessary authority to bring about changes in the inhuman treatment of these workers; that witnesses have stated that several times he had the opportunity to ascertain what the condition of his personnel was during his visits to the plants; that he himself states that he came in contact with these men

from Voelklingen, particularly with the internees from Etzenhofen, who were recognizable by the prison garb, but that he had never considered the condition of their existence, although their miserable situation was apparent to all those who passed them on the street;

Whereas among the documents introduced in the proceedings by the defense counsel of the defendant, there are many depositions which indicate his moral qualities and his lofty sentiments, that there is no reason to contest the sincerity of these declarations, but that one cannot but deplore still more the fact that a man possessed of the intelligence, of the social and family background of Hermann Roechling, should have shown such an inexcusable indifference concerning the material situation of his foreign personnel, and his responsibility in this respect appears so much greater since his own social position was of the very highest;

Whereas the defense also presents a certain number of documents which prove that Hermann Roechling intervened on several occasions to obtain the liberation of Frenchmen arrested by the Gestapo, and has particularly described his role concerning the pardoning of hostages arrested at Auboué, who were to be shot;

Whereas there is cause to take into account in sentencing him that he thus performed services which had a humanitarian aim; that there is cause also to take into account that he is now 75 years of age.

With regard to Ernst Roechling

Whereas Ernst Roechling, aged 60, is an industrialist of Voelklingen, that he is one of the principal pillars of the "Roechlingsche Eisen- und Stahlwerke Gesellschaft";

That he never joined the NSDAP, that he even expressed anti-Nazi sentiments, that in July 1944 when he was in Paris, he was arrested by the Gestapo for having given shelter to a member of the plot against Hitler, that he was then taken to Germany and sentenced by the "Volksgericht" (People's Court) to 5 years' hard labor, that he was freed on 6 April 1945 when the Allies arrived;

Whereas the defendant since 1930 directed in Paris the fine steel trade of Voelklingen in France and in other countries, that after the occupation of France he settled in Paris and that he became the representative there of his cousin Hermann, both as president of the RVE and Reichsbeauftragter and as industrialist at Voelklingen;

Whereas he himself was "Reichsbeauftragter fuer Eisen und Stahl," a position which consisted mainly in the control and supervision of iron and steel plants and enterprises in the occupied countries;

Whereas in these positions, Ernst Roechling concluded agreements with the French authorities of that time, in particular with Bichelonne and Cathals, that his perfect knowledge of French, his amiability, his great artistic and literary culture greatly facilitated his negotiations, that it was certainly not solely for the needs of the cause, but as corresponding to its spirit which Hermann Roechling expressed in a letter to Hitler when he asked for pardon for Ernst after the attempt upon his life in July 1944:

> "Since 1940, he has, with a fortunate knack in his dealings with the French, displayed an extraordinary activity in improving Franco-German relations, each time it was necessary.
>
> "I have taxed his capacities to a very great extent, and it is largely due to my cousin that I have had considerable success in my dealings with the French steel industry * * *. We complemented each other very well. His fascinating amiability won over the French, while I involved them in technical problems and developed their interest in our work."

But whereas there is no doubt of the activity of Ernst Roechling, the prosecution does not bring out in detail the number, the nature, or the importance of the agreements which the defendant is alleged to have thus concluded with the Pétain government or with private enterprises; that besides, Ernst Roechling has stated that he never acted except on the instructions of his cousin; that he took no personal initiative; that he states that he was nothing but a subordinate; that on this point also the prosecution has not brought sufficient and proper information to determine whether, in his conduct, Ernst Roechling was a coauthor or an accomplice or simply a good executing agent; that there is on this question a doubt in the mind of the Tribunal which should benefit the defendant;

Whereas the prosecution in its accusation of Ernst Roechling charges him with the following:

(1) Of having favored the economic enslavement of the occupied countries for the benefit of the war effort of the Reich by supplying the authorities and the industry of the Reich with precise information on the possibilities of production of a certain number of French metallurgical plants;

(2) Of having acquired in order to further the war effort of the Reich financial shares in certain French enterprises through the intermediary of the "Société de Crédits et d'Investissements";

(3) Of having favored the recruitment and the deportation of skilled workers by establishing German services on the premises

of the "Société Lorsar" in Paris, the purpose of which was to send French skilled workers into the plants of the Reich;

But whereas regarding the first count of the indictment mentioned above it does not appear that Ernst Roechling went beyond his duties as liaison representative of Hermann Roechling in Paris as far as the organization of the production of steel plants is concerned;

That with regard to the second count, a special report lodged in the inquiry opened in Paris against X [sic] (Société de Crédits et d'Investissements) by the experts Bieuville and Heusse shows that the said Kreuter played the principal part in the creation and functioning of this corporation, and that it is not shown herefrom that Ernst Roechling was guilty of any special activity;

That with regard to the third count, it has not been established that Ernst Roechling was personally active in the functioning of the recruiting service for workers established in Paris on the premises of the "Société Lorsar" which was a branch of the firm of Roechling;

Whereas therefore no count of the indictment can be maintained against Ernst Roechling.

With regard to Hans Lothar von Gemmingen-Hornberg

Whereas Hans Lothar von Gemmingen-Hornberg, aged 55, son-in-law of Hermann Roechling, was the president of the Board of Directors of the Roechling steel plants which was composed of seven members; that he held besides the position of "Betriebsfuehrer" (plant manager) which means the position of representing the enterprise to the competent authorities, particularly concerning labor; that among his duties were his connections with the Gestapo with regard to the plant police; that in his position as president of the "Direktorium" he had under his orders the directors of the plant, especially the two defendants Maier and Rodenhauser;

That he was a member of the NSDAP since 1935;

Whereas it is proper to examine the part he played in the employment of prisoners and deportees in the firm of Roechling, that the material conditions in which this employment took place were examined above;

Whereas if Hermann Roechling has stated that he was often absent from Voelklingen and did not occupy himself personally with the material conditions of his workers, that this care fell essentially on von Gemmingen-Hornberg; that the latter has not claimed, like Hermann Roechling, to have been unaware of these conditions and has stated that the "Werkschutz," the "Schnellgericht" and the camp at Etzenhofen had functioned under im-

perfect conditions and that he had got hold of unfavorable reports concerning the material condition of the foreign workers, but that he claims it was impossible for him to modify that state of affairs; that he states that the "Werkschutz" and the camp at Etzenhofen were under the orders of the Gestapo and that he himself could not give them orders on this subject; that on the other hand, a contract had been concluded with the DAF (German Labor Front) concerning the feeding of foreign civilian workers, and that therefore he was no longer in charge thereof, that he has stated that he himself did not realize the deplorable condition of those foreigners;

But whereas the high position which he occupied in the corporation, as well as the fact that he was Hermann Roechling's son-in-law, gave him certainly sufficient authority to obtain an alleviation in the treatment of these workers by the "Werkschutz," that moreover the employees of the "Werkschutz" were appointed by the factory, that he has stated never to have visited the camp at Etzenhofen, claiming against any probability that the employees of the Werkschutz would not have let him enter if he had tried to do so;

That the contract with the DAF left upon him as plant leader the responsibility for the material care of the foreign workers; that this contract as any other was revocable if it did not give satisfaction, and that the miserable position in which it put the workers ought to have induced von Gemmingen-Hornberg to denounce it, that moreover this contract was not concluded until 1942, that on the other hand it did not apply to prisoners of war, the latter remaining always under the direct orders of the "Directorium";

Whereas there is cause under these circumstances to hold von Gemmingen-Hornberg responsible for the inhuman treatment of the foreign workers and prisoners of war in the firm of Roechling, which he aided by his negligence and his lack of courage towards the Gestapo;

Whereas von Gemmingen-Hornberg has submitted documents trying to establish that he was not disinterested in the material lot of the foreign workers, that he took numerous steps in order to get rid of Rassner, the chief of the "Werkschutz" of the plant, whose brutality and meanness were particularly felt by the workers, that the purpose of other interventions on his part was to improve the conditions with regard to food and clothing for the workers, the condition of small children and the elimination of brutalities, that the interventions which he undertook concerning secondary questions will be remembered by the Tribunal when passing sentence, but that this does not eliminate his re-

sponsibility with regard to the general conditions put upon the foreign workers from the point of view of their material condition and their employment in the plant; that, on the contrary, it underlines the fact that one of von Gemmingen-Hornberg's duties was the organizing of the daily life of the foreign workers;

Whereas the prosecution charges von Gemmingen-Hornberg with having participated in the acts upheld by the prosecution against Hermann Roechling under a certain number of other counts of accusation, in particular the economic plunder of the occupied countries;

But whereas the prosecution has not brought any precise charge on which the facts thus set out can be based; that it is not established that von Gemmingen-Hornberg exceeded the role of mandatory or legal representative of Hermann Roechling in the administration of the firm of Roechling; that it is therefore proper to reject the other charges upheld by the prosecution against von Gemmingen-Hornberg.

With regard to Albert Maier

Whereas Albert Maier, 53 years of age, entered into the service of the Roechling steel plants in 1929 and subsequently became financial director, being as such a member of the "Direktorium";

That he was a member of the NSDAP since 1936;

Whereas the defendant is charged with having been an accomplice to certain acts which are imputed to Hermann Roechling;

Whereas it is not proven and not even alleged by the public prosecutor that Maier had ever stepped out of his functions as financial director of the Roechling Company to take a given initiative concerning various facts with which Hermann Roechling is charged, that he states never to have played another part except that of an executing agent, particularly in several transactions with French authorities and in which he himself has participated;

Whereas under these conditions no incriminating factors can be retained against him.

With regard to Wilhelm Rodenhauser

Whereas Wilhelm Rodenhauser, aged 68, electrical engineer, was since 1904 with the firm of Roechling, that he rose through the various administrative grades to be Director General, that by virtue thereof he formed part of the "Direktorium" under the orders of Von Gemmingen-Hornberg; that he was, as he has admitted himself, especially in charge of labor;

Whereas he applied for membership of the NSDAP in 1937 but that for some unknown reason this was not carried out;

Whereas he is on account of his position responsible for the working conditions to which the deportees and the prisoners of war were subjected; that the latter were, contrary to international conventions, utilized in work which was much too hard, such as blast furnaces, coking plants, pitch, with regard in particular to the under-nourishment they suffered and the working hours;

Whereas he, together with von Gemmingen-Hornberg, organized at the plant in 1943 a "Schnellgericht" in order to punish disciplinary offenses, which resulted, together with the establishment of the camp at Etzenhofen, which occurred at the same time, to render the living and working conditions of the punished foreigners inhumane;

Whereas Rodenhauser maintains in vain that the material condition of the workers depended on the DAF and the questions of discipline on the Gestapo; that the contract with the DAF was dated February 1942; that previously the Roechling plants had sole charge of the maintenance of foreign workers; that afterwards they still had a right of supervision on the DAF; that the fate of prisoners of war was always incumbent upon the firm of Roechling; that Rodenhauser, who was specially in charge of labor, issued numerous circulars signed by him relating to discipline, punitive measures to be taken in case of escape, or bad work performance, and to punishments affecting the food rations; that in particular in a circular dated 11 December 1942, Rodenhauser states that the warm food may have been withheld up to 3 days a week from foreign workers on account of absences from work; that whatever he says, not a single superior decision, authorized such a measure; that Rodehnhauser cites in vain a document dated 1944 authorizing solely the suppression of food;

Whereas he was in constant contact with the "Werkschutz," the "Schnellgericht," and the camp at Etzenhofen; that the setting of examples by punishments ordered by the "Schnellgericht" shows clearly that, contrary to what he claims, the Gestapo was not the only one whose function was to punish disciplinary infractions at the plant;

Whereas by going to Etzenhofen camp and by inspecting the conditions of the foreign workers at the plant he could have become aware of their miserable position; that he does not even claim that he tried to obtain from the guards at Etzenhofen camp a more humane treatment for the inmates; that his position as Director General gave him sufficient authority to remedy

that state of affairs, and that in any case he should have tried to do so;

Whereas he has thus rendered himself guilty of having supported the bad treatment inflicted on prisoners of war or deportees, for purposes of slave labor;

Whereas all these acts constitute as far as the counts of the indictment are concerned which the Tribunal is retaining, violations of Article II of the aforementioned Law No. 10;

Consequently, the General Tribunal after deliberation finds—

Ernst Roechling and Albert Maier are not guilty of the charges filed against them in the indictment.

And further finds—

Hermann Roechling guilty of having committed crimes against peace by having participated in the waging of aggressive wars and wars in violation of international treaties, agreements, or assurances, because:

1. His action and his personal initiative had the effect of enslaving the steel industry in the occupied countries in order to increase the war potential of the Reich, particularly in his capacity as "Generalbeauftragter" (Plenipotentiary General);

2. His activity and his personal initiative, which were decisive beginning with the month of June 1942, in his capacity as president of the "Reichsvereinigung Eisen" (Reich Association Iron) and as "Reichsbeauftragter," and which aimed at the increase in the iron and steel production of the Reich and of all the occupied countries for the purpose of waging aggressive wars; and,

3. By giving advice to the Nazi government concerning the deportation of inhabitants of occupied countries, either in order to force them to work, or in order to draft them against their own country, or its Allies.

He is also guilty of war crimes by—

1. Having by his personal action exercised complete seizure of the steel industry of France from June 1940 until February 1941, especially in the Departments Moselle and Meurthe-et-Moselle, for the purpose of bringing about, at the expense of the occupied country, the maximum increase in the war potential of the Reich;

2. Having pursued this action from February 1941 until March 1944 over 12 steel plants in the Department Meurthe-et-Moselle;

3. Having exercised a rigorous control over these 12 plants from March 1944 until the liberation of the territory, for the purpose of bringing about, at the expense of the occupied country, the maximum increase in the war potential of the Reich;

4. Having supported and contributed in the removal of machinery from the occupied countries in order to enrich the Reich and to increase its potential, and this to the detriment of these countries, by removal especially of rolling mills and rolling-mill motors, installations and machinery from Ymuiden (Holland), Angleur-Athus (Belgium), and Joeuf (Meurthe-et-Moselle);

5. Having profited personally from the economic plunder in the occupied countries, especially in demanding the management and ownership of the plants of the "Société Lorraine Minière et Métallurgique" at Thionville (Moselle), plants which he administered as the actual owner, and on which he obtained an option in the event of a victory for the Reich, by acquiring from the German authorities to the detriment of the occupied countries at Reichshoffen (Bas-Rhin) the "Tréfileries Wurth" and by having a metal structure requisitioned at Cirey (Meurthe-et-Moselle) to the detriment of the "Société de Saint Gobain";

6. Having employed prisoners of war and deportees in the plants which he managed or in his own plants, and of having exercised, or having consented to, a very strict regime in order to compel these deportees or prisoners of war to work, especially by the establishment of a "Schnellgericht" and a punishment camp; and by having tolerated or encouraged punishments meted out in inhuman fashion.

Hans Lothar von Gemmingen-Hornberg and Wilhelm Rodenhauser are guilty of war crimes for having been coauthors or accomplices to the above-stated acts charged against Hermann Roechling, in paragraph 6, [immediately above] concerning the employment of prisoners of war and deportees in the plants of the Roechling firm.

In the name of the French Commander in Chief in Germany, the General Tribunal of Rastatt, having deliberated behind closed doors; considering the declaration of culpability which has been presented above; deciding in order to eliminate the infractions of the defendants found guilty and retained as indicted and by applying Law No. 10 of the Inter-Allied Control Council, dated 20 December 1945;

Whereas all the facts retained and charged against the defendants found guilty are covered by, and punishable under, Article II of the above-mentioned Law [Law No. 10];

Whereas the General Tribunal possesses the necessary elements to determine the extent of the sentences which are to be imposed against those defendants found guilty;

For these reasons, it sentences—

HERMANN ROECHLING to seven years imprisonment;

HANS LOTHAR VON GEMMINGEN-HORNBERG to three years imprisonment;

WILHELM RODENHAUSER to three years imprisonment;

Sentences the above-named collectively to pay the costs and expenses of the trial.

Decides that payment shall be made immediately and, in case of nonpayment, fixes the duration of the arrest for debt at the rate of one day for every ten marks not paid at the expiration of the sentence, the detention not to exceed six months.

Decides that the beginning of the sentences should start from the date of imprisonment ordered by the judiciary authorities, American as well as French, namely:

For Hermann Roechling beginning with 26 May 1945, deducting the time he had spent in provisional liberty from 12 May 1946 to 30 April 1947;

For von Gemmingen-Hornberg from 1 May 1945 deducting the time spent by him in provisional liberty from 12 May 1946 to 15 November 1946;

For Rodenhauser from 12 September 1946;

Releases and acquits Ernst Roechling and Albert Maier and states that they should be released immediately if they are not to be retained for other reasons.

JUDGMENT ON APPEAL

SUPERIOR MILITARY GOVERNMENT COURT OF THE FRENCH OCCUPATION ZONE IN GERMANY

JUDGMENT OF 25 JANUARY 1949 IN THE CASE VERSUS *HERMANN ROECHLING AND OTHERS CHARGED WITH CRIMES AGAINST PEACE, WAR CRIMES, AND CRIMES AGAINST HUMANITY. DECISION ON WRIT OF APPEAL AGAINST THE JUDGMENT OF 30 JUNE 1948*

The Superior Military Government Court

Presiding Judge:

M. Fournier, Counsel of the Court of Appeals, Paris, France.

Associate Judges:

M. Weninger, former Presiding Judge of the Superior Military Court of the French Zone of Occupation.

M. At, Presiding Judge de Chambre of the Superior Military Government Court of the French Zone of Occupation.

M. Meijer, Rear Admiral of the Royal Dutch Navy.

M. Huens, First Assistant to the King's Prosecutor, Brussels, Belgium.

953718—52——70

M. Tournier, Chief of the Information and Education Branch of Military Government of the French Zone of Occupation.
M. Gous, Colonel of the French Air Force, Retired.

Secretary General:
M. Poirot.

Prosecutor: M. Gerthoffer, Assistant to the Chief Prosecutor, Court of Appeals, Paris, France.

The legal remedies submitted by the prosecution and the convicted persons to the Court of Appeal and against the judgment of the General Court dated 30 June 1948, have been presented in due form and date.

After hearing the parties, the Court, which convened for deliberation, ruled the matter to be dealt with in oral proceedings.

During the proceedings resumed in the sessions of 23 and 24 November 1948, in the course of which the prosecution, the appellants, and the appellees presented their evidence, and the defense and the defendants had the last word—the Court ruled as follows:

It devolves upon the Court to examine the actions charged to the appellants and appellees and enumerated in the following three sections of this judgment:

I. Fundamental considerations, texts, court practice statements concerning the point of view taken by the Court as to certain justifications of a general nature presented by the defense.

II. Crimes against peace (preparation and waging of aggressive wars)—

a. Part played by the Nazi government.

b. Part played by Hermann Roechling.

III. War crimes.

A. Of an economic nature.

The policy of the Nazi government

1. *Hermann Roechling*

a. Systematic looting of the economy—compulsion exercised upon the foundries in the occupied territories to work for the German war effort, and spoliation.

b. Systematic looting of a financial and economic nature.

2. *Ernst Roechling*

As an accomplice of Hermann Roechling for the aforementioned actions and specifically for:

a. Burdening of the French economy with a deficit of 180 millions.

b. Inquiries of an economic nature.

c. Financial participations.

d. Purchase Office "Lorsar."

e. Wire manufacturing factories Julien Wurth at Reichshoffen.

3. *von Gemmingen-Hornberg*

4. *Maier*

B. In employing manpower.

I. The Policy of the Nazi government

II. The Role of the Defendants

1. Deportation—in the proper sense—of civilians of an occupied country for compulsory labor.

2. Employment of deported workers.

3. Ill-treatment of deported persons.

4. Employment and ill-treatment of prisoners of war.

In a fourth and last section the Court will decide as to the guilt and the amount of punishment.

Section 1

Fundamental Considerations

For the sake of creating a coherent picture, the Court considers it expedient to list the principles and texts to which it is bound and which form the basis of its decision.

The legal basis is supplied by the Allied Control Council Law No. 10, dated 20 December 1945, relating to the punishment of persons who have become guilty of war crimes, crimes against peace or humanity.

The Hague Convention, the Geneva Convention, Articles 227 and 228 of the Versailles Treaty, and the Kellogg-Briand Pact of 1929 should also be mentioned.

Article I of Control Council Law No. 10 provides:

> "The Moscow Declaration of 30 October 1943 'Concerning Responsibility of Hitlerites for Committed Atrocities' and the London Agreement of 8 August 1945 'Concerning Prosecution and Punishment of Major War Criminals of the European Axis' are made integral parts of this law. Adherence to the provisions of the London Agreement by any of the United Nations, as provided for in Article V of that Agreement, shall not entitle such Nation to participate or interfere in the operation of this Law within the Control Council area of authority in Germany"

and, in Article II, it is said, as far as the counts submitted to the Court are concerned:

"1. Each of the following acts is recognized as a crime:

"(*a*) *Crimes against Peace. Initiation of invasions of other countries* and wars of aggression in violation of international laws and treaties, including but not limited to *planning, preparation, initiation or waging* a war of aggression, or a war in violation of international treaties, agreements or assurances, or *participation in a common plan,* or conspiracy for the accomplishment of any of the foregoing." [Emphasis supplied.]

"(*b*) *War Crimes. Atrocities or offences against persons or property constituting violations of the laws or customs of war,* including but not limited to, *murder, ill-treatment or deportation to slave labour,* or for any other purpose, of civilian populations from occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, *plunder of public or private property,* wanton destruction of cities, towns or villages, or devastation not justified by military necessity. [Emphasis supplied.]

* * * * * * *

"2. Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (*a*) a principal or (*b*) was an accessory to the commission of any such crime or ordered or abetted the same or (*c*) took a consenting part therein or (*d*) was connected with plans or enterprises involving its commission or (*e*) was a member of any organization or group connected with the commission of any such crime or (*f*) with reference to paragraph 1 (*a*), if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, co-belligerents or satellites or held a high position in the financial, industrial or economic life of any such country.

"3. Any person found guilty of any of the crimes above-mentioned may upon conviction be punished as shall be determined by the tribunal to be just. Such punishment may consist of one or more of the following:

"(*a*) Death.

"(*b*) Imprisonment for life or a term of years, with or without hard labour.

"(*c*) Fine, and imprisonment with or without hard labour, in lieu thereof.

"(*d*) Forfeiture of property.

"(*e*) Restitution of property wrongfully acquired.

"(*f*) Deprivation of some or all civil rights. Any property declared to be forfeited or the restitution of which is ordered by the Tribunal shall be delivered to the Control Council for Germany, which shall decide on its disposal.

"4. (*a*) The official position of any person, whether as Head of State or as a responsible official in a Government Department, does not free him from responsibility for a crime or entitle him to mitigation of punishment."

It is further provided that the military commander of each zone will designate the tribunal which is to try the offenses dealt with in the law, and that he will also determine the procedural law to be applied. On the basis of these provisions, the General Court and then the Supreme Court became concerned with this case.

It is necessary to quote here the provisions of the Hague Convention of 1907 and of the Geneva Convention of 1929, namely:

a. Articles 6, 46, 47, and 52 of the former:

"*Article 6:* The State may utilize the labour of prisoners of war according to their rank and aptitude, officers excepted. The tasks shall not be excessive and shall have no connection with the operations of the war.

"Prisoners may be authorized to work for the public service, for private persons, or on their own account.

"Work done for the State is paid at the rates in force for work of a similar kind done by soldiers of the national army, or, if there are none in force, at a rate according to the work executed.

"When the work is for other branches of the public service or for private persons the conditions are settled in agreement with the military authorities.

"The wages of the prisoners shall go towards improving their position, and the balance shall be paid them on their release, after deducting the cost of their maintenance.

"*Article 46:* Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

"Private property cannot be confiscated.

"*Article 47:* Pillage is formally forbidden.

"*Article 52:* Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

"Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied. Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible."

b. And Articles 31 and 32 of the latter:

"*Article 31:* Labor furnished by prisoners of war shall have no direct relation with war operations. It is especially prohibited to use prisoners for manufacturing and transporting arms or munitions of any kind, or for transporting material intended for combatant units. In case of violation of the provisions of the preceding paragraph, prisoners, after executing or beginning to execute the order, shall be free to have their protests presented through the mediation of the agents whose functions are set forth in Articles 43 and 44, or, in the absence of an agent, through the mediation of representatives of the protecting Power.

"*Article 32:* It is forbidden to use prisoners of war at unhealthful or dangerous work.

"Any aggravation of the conditions of labor by disciplinary measures is forbidden * * *."

Articles 1 and 2 of the Kellogg-Briand Pact which was binding for 63 nations, including Germany, in 1939, read as follows:

"*Article 1:* The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

"*Article 2:* The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means."

Finally, Article 27 of the Versailles Treaty provided the establishment of a special tribunal which was to consist of 5 representatives of the Allied and Associated Belligerent Powers of the First World War, in order to pass judgment on the German ex-Kaiser for gross violation of international morality and of the sanctity of treaties. In passing its judgment, that tribunal was to endeavor to safeguard the respect of solemn obligations and international agreements. Under Article 228 of the Treaty, the German Government conceded the Allied Powers the right to hand over to their military tribunals such persons as had violated the laws and customs of war.

On the other hand, reference must be made to the Nuernberg judgment of the International Military Tribunal on the major war criminals. This judgment, forming the basis for the court practice in this field and which establishes, on the one hand, the criminal character of the conception and conduct of the aggressive wars for which Germany is blamed and, on the other hand, of the actions which are defined as war crimes, is no longer contestable, any more than is the personal criminal responsibility of those persons who participated in aggressive war or war crimes, within the meaning and limits defined by the aforesaid Law No. 10.

In other words—He who has violated the laws of war cannot vindicate himself by saying that he received his orders from the state if the state, in issuing such orders, transgressed the prerogatives given to it by international law.

Under certain conditions, the order received may be considered as an extenuating circumstance.

Ultimately it emerges from the judgment of the International Military Tribunal as a reply to one of the principal arguments of the defense that the maxim *nullum crimen sine lege* does not constitute a limitation of the sovereignty of the states; that this principle only formulates a generally respected rule; and that it is false to decry as unjust a punishment imposed upon those who, under breach of solemn agreements and treaties, attacked a neighbor without notice; that, in this case, the attacker is aware of the despisable character of his action; that the conscience of the world —far from being indignant for the punishment of the perpetrator—would feel indignation if the culprit were to go unpunished.

In the light of the principles and legal provisions mentioned in the foregoing, the role of each and every one of the appellants and appellees will now be submitted to scrutiny (taking into consideration that the prosecution did not deem that all counts of the indictment were proved):

A. With respect to crimes against peace, that is—

(*a*) The preparation of the aggressive wars.

(*b*) The conduct of the aggressive wars.

B. With respect to war crimes, that is—

(*a*) Contribution to the economic enslavement of the occupied territories.

(*b*) Participation in the systematic looting of public or private property.

(*c*) Abatement of the deportation of nationals of the occupied territories for the purpose of forced labor or even for the purpose of using them for war service and for the fight against their own country or against other countries at war with Germany.

(*d*) Compulsory employment and maltreatment of nationals of the occupied territories (prisoners of war, deported persons).

(*e*) Spoliation of private or public property in the occupied territories.

On the basis of this examination the Tribunal will draw its conclusions with respect to the contested judgment.

The Tribunal deems it to be expedient to state first its opinion regarding some arguments of a general nature which the defense has submitted.

As regards the order received—Law No. 10 is clear and explicit on this point, and the judgment of the International Military Tribunal has clearly stated that "under international as well as under national law" the relations between superiors and subordinates cannot result in immunity.

The judgment also states:[1] "Hitler could not make aggressive war by himself. He had to have the cooperation of statesmen, military leaders, diplomats, and businessmen;" and furthermore:[2] "The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible."

Incidentally, this is the legal situation in most countries. In French law, for example, Article 327 of the Penal Code requires both a command of the law, *and* the order of the legitimate authority. In the pending case, however, the criminal acts have not been ordered, but prohibited by international law; this was already the case on the basis of the aforementioned agreements and treaties, prior to the promulgation of Law No. 10. The order received, therefore, can only be rated as an extenuating circumstance.

As regards necessity—The judgment of the United States [Nuernberg] Military Tribunal of 30 July 1948 *re* Krupp[3] defines that the defense of necessity (which in the pending case under consideration of the Superior Court would have consisted in the commission of criminal acts for the attainment of victory) may only be admitted if pressure was exerted on the will of the defendant in order to make him do something against his personal convictions; that, however, the defense of necessity cannot be admitted if the intentions of the perpetrator coincided with the will of the one who gave the order.

If this correct finding of the United States [Nuernberg] Military Tribunal actually refers to the "order received" with which we have already dealt (but if the existence of necessity, according to the statements of the defense, is not connected with orders received, but with the necessity to be victorious), it must be added

[1] Trial of the Major War Criminals, op. cit., volume I, page 226.

[2] Ibid., p. 224.

[3] United States *vs.* Alfried Krupp, et al., Case 10, volume IX, this series.

that the existence of necessity is admitted, as a defense under all modern legislation only if the compulsion coincides with the punishable act and if its effects are such that the person claiming this defense is not able to resist in consideration of his (or her) age and sex.

Article 328 of the French Penal Code, for instance, excuses homicide and battery only if these "acts were the consequence of self-defense or of the defense of others." The practice of the courts likewise recognizes as irresistible compulsion or necessity, various circumstances, particularly those which are independent of human intervention and which lead to a situation where a person, in order to save his (or her) life, which is directly imperiled, commits a crime or offense (such as a shipwrecked person who keeps afloat on a part of the wrecked ship together with a fellow sufferer and pushes him into the sea when he finds that the wreck will support only one).

The judgment of the United States [Nuernberg] Military Tribunal IV adopted the same viewpoint in the Flick case* and stated that necessity as an extenuating circumstance may be assumed if the criminal act was committed in order to evade irreparable damage and if there was no other possibility to avoid same, and under the condition that the crime committed was not in disproportion to the impending damage.

Summarizing, it is stated that, in the pending case, the defendants may be entitled to claim the protection of necessity only as an extenuating circumstance.

Regarding the assertion that there was no "terror regime" and no "particular severity" in the occupied territories—It will be sufficient to quote an excerpt from Goering's address of 8 August 1942, delivered to several members of authorities commissioned with the administration of the occupied territories.

> "God knows that you have not been sent there in order to care for the welfare of the people under your supervision but in order to exploit them to the utmost so that the German people may live. This is what I expect of your efforts. There must be an end, once and for all, of this eternal care of other people. I have reports on hand which state their delivery quotas. It is nothing in comparison to their territories. It is all the same to me if you thereupon tell me that your people will be suffering from hunger."

For the rest, the defendants themselves pointed out this regime of terror and "particular severity" as a fact in their favor, used them as an excuse for their personal acts and ascribed them to the compulsion and severity of the Nazi regime.

* United States *vs.* Friedrich Flick, et al., Case 5, volume VI, this series.

The defense of lack of knowledge—No superior may prefer this defense indefinitely; for it is his duty to know what occurs in his organization, and lack of knowledge, therefore, can only be the result of criminal negligence. For the rest, the acceptance of superior orders on the one hand, and the lack of knowledge as to their execution by subordinates, on the other, would lead to the abolishment of any penalty; the executing agents would seek cover behind the superior order, and the superior behind his lack of knowledge and say: "I had no knowledge of that."

Finally, the excuse of *total war* as taught by [von] Clausewitz doctrines cannot be taken into consideration even for one moment. It is said there: "War is an act of violence, and there are no limits to violence. Imperceptible restrictions under the name of 'international law' futilely sap its strength. He who ruthlessly serves violence will have the biggest advantage if the opponent acts otherwise."

In other words, it is the formula, "everything is permitted in war" or, "the end justifies the means," a doctrine which was also expressed in the course of a session by Hermann Roechling who said, "The most powerful is in the right."

For, it was just the Hague Convention, the Geneva Convention, etc., which—after the elapse of such a length of time and after the age of antiquity, of Christendom, of the medieval period had produced such interesting examples as God's Truce, the Golden Bull of Charles V—reestablished the principles of humane warfare as far as this was possible considering its direful effects.

Germany's intention deliberately to betray these principles to which she had become a party by signing the various diplomatic documents is clearly obvious.

It must be stated in addition that the defendants assert in this connection that the Hague Convention of 1907 had become void and was not in force any longer, but that they—contradicting themselves—refer to this international agreement whenever it provides the defense with a favorable argument.

Before proceeding to the examination of the facts, the Tribunal, finally, deems it expedient to affirm—if such affirmation is needed at all—that its findings will not be influenced by either the least feelings of the "right of the victor," or by the least feeling of hatred or, what in itself would be incomprehensible, by any feeling of anxiety on the part of anyone, whoever he may be, on account of the consequences which might result from this decision in future; it exclusively pursues the aim of finding a judgment in accordance with the principles of "human rights" which were masterfully brought to bear by the International Military Tribunal in Nuernberg.

Ultimately, nobody is to be indicted for patriotism, which is always respectable, but only for such of its effects as were criminal; for such a feeling cannot serve as an excuse for a crime, not any more than the child's love could serve as an excuse for a son who assisted his father in the commission of robbery.

The one as much as the other of such feelings can only be considered as an extenuating circumstance.

Section 2

Crime against Peace

Preparation and waging of wars of aggression

As already stated in the first section of this judgment, the International Military Tribunal conclusively established the actions for which the political leaders of the Reich are responsible and pronounced the wars which they waged for the purpose of expanding the German Lebensraum beyond the German frontiers of 1914, as being aggressive wars; it furthermore established that while no interest was attached to the procurement of colonies, the purpose was to gain possession of the countries immediately adjacent to Germany (Hitler's speech of 13 April 1933, meetings in the Reich Chancellery on 5 November 1937, and on 23 November 1939).

Goering was instructed to coordinate all the problems pertaining to the raw materials necessary for the preparation and waging of the war; the International Military Tribunal established in principle, that next to Hitler, he was the actual instigator of the wars of aggression; that he was the originator of all Germany's war plans; and it was he who carried out their military and diplomatic preparation.

In order to determine Hermann Roechling's guilt or innocence with regard to the crime against peace, therefore, it must be established whether his activity constitutes a sufficient and, in particular, an intentional collaboration with Hitler or with Goering in the preparation and the waging of the war which was a war of aggression.

Article I of Law No. 10 refers in particular to the London Charter of 8 August 1945 regarding the prosecution and punishment of the chief war criminals of the European Axis.

Article II, of the same law, enumerates the actions which are to be regarded as criminal, particularly the crimes against peace through the invasion of other countries and the waging of wars of aggression in violation of international law and of international agreements.

A comparison of these articles shows that it is only the principal originators of the crimes committed against peace who are to be prosecuted and punished.

This interpretation was confirmed by the International Military Tribunal as well as by the United States [Nuernberg] Military Tribunal through its verdict of 25 July 1948 in the case against I.G. Farben.*

This latter judgment has shown the degree of participation necessary to make an originator of a crime against peace punishable and it has established that the International Military Tribunal fixed the degree of participation required very high, in order to avoid "mass sentences," that is to say, in order not to go as far as the lowest ranks, namely, the ordinary soldier.

This judgment establishes moreover that the principal war criminals sentenced by the IMT were prominent persons whose actions bore the character of planning and carrying out their aggressive ambitions on behalf of the nation.

As regards the *preparation of war,* Hermann Roechling was, in the period before the outbreak of war, the head of one of the largest iron works in the Saar: "The steel works in Voelklingen." In this capacity he took a considerable part in the rearmament of his country within the framework of the Four Year Plan and under the direction of Hermann Goering.

According to the decision of the trial judges of the IMT the armament of a country need not of necessity be based on the intention to unleash a war of aggression. No sufficient evidence has been brought to show that Hermann Roechling's participation in the rearmament was carried out with the intention and aim to permit an invasion of other countries or a war of aggression in violation of international law or of international agreements.

In particular—as was also established by the trial judges—the utilization of low-grade ores which may be justified by economic requirements, and which was proposed by him, need not in our way, even in respect of armament economy, necessarily lead to the outbreak of wars of aggression.

It may quite well have been that Germany found itself in a position of having to develop the utilization of low-grade ores further, in order in the event of war—be it a war of aggression or otherwise—not to have to rely on the import from abroad, which probably would not have materialized, and to be independent of foreign countries.

As regards the *waging of war,* Hermann Roechling was, during the course of this war, appointed to high administrative offices and

* United States *vs.* Carl Krauch, et al., Case 6, volumes VII and VIII, this series.

consequently to the direction of the iron production in Germany and in the occupied countries.

In particular, he was on 29 May 1942 appointed president of the Reich Association Iron (RVE), that is to say, an organization the aim of which was to direct the German war effort with a view to coordinating and increasing the iron production; on 1 June 1942 he was given the title of Reich Plenipotentiary (Reichsbeauftragter) while his authority was extended to all countries occupied by the Reich.

These appointments actually made him the head of the iron industry in Germany and the occupied countries, and he used the authority at his disposal in such a way as to obtain considerable results.

In spite of this the Tribunal is of the opinion that Hermann Roechling, while participating in the war efforts of his country, did not play a part which might be evaluated as a leading part within the meaning of the established legal interpretation of the provisions of (Control Council) Law No. 10. Besides, it has been established that Hermann Roechling did not take over the direction of the iron industry until long after the outbreak of all the wars of aggression.

There is no doubt that as head of the iron production he supported Germany's war efforts to a considerable extent; but in doing so he did not participate in any way in the waging of the war.

It is fair, on the other hand, to consider the fact that Speer, the head of the Organization Todt, Reich Minister for Armament and War Production, and Member of the Central Committee for the Four Year Plan from February 1942, was acquitted by the IMT on the charge of crime against peace for his participation in the waging of war.

Summarizing, the Tribunal finds Hermann Roechling in respect of the preparation and waging of the war of aggression—in spite of his participation in certain conferences with Goering, in spite of his determination to get the principle of the utilization of low-grade ores accepted, in spite of his letter to Hitler of June 1940, in spite of his program for the Germanization of the annexed provinces, in spite of his appointment as "General Plenipotentiary," "Reich Plenipotentiary," and president of the Reich Association Iron, in which capacity he gave a lecture in Knuttange in order to explain his authoritative power, and in the course of which his vanity perhaps allowed him to attribute more authority to himself than he was actually entitled to ("If anyone thinks that he can, in opposition to me, go to the Reich Ministry of Economics, I have made this quite useless for the whole of the period

of my functions"), in spite of numerous other actions, which are besides evaluated as component parts of war crimes—remains outside the boundary which "has been fixed very high by the IMT."

Section 3

War Crimes

A. War crimes of an economic nature

As has been ascertained by the International Military Tribunal, the occupied countries were not only exploited for the requirements of the occupation army, but were also relentlessly exploited —in spite of the Hague Convention—for the benefit of the entire German war requirements, without any consideration being given to the economy of the country. This was done in accordance with a carefully thought-out plan and policy. In fact, it amounted to *systematic plundering* of private and public property, as well as to a violation of Article II [paragraph] 1 (*b*) of Law No. 10 and Article 46 of the Hague Convention. The International Military Tribunal mentions the following methods of plundering. Those industries which were considered to be of a certain value to the German war requirements were forced to continue production, while most of the others were closed down; the raw materials and finished products were requisitioned for the requirements of German industry.

With regard to the analysis of the part played by each of the defendants—which is to follow subsequently—it is first of all pointed out that the term *"plundering"* (Pluenderung) is used specifically with respect to the removals which were carried out for the purpose of strengthening the German war potential, while the term *"spoliation"* (Raub) is used with respect to removals which were carried out both in the interest of the war potential and in personal interests.

First, however, it is necessary to specify the general nature and significance of the firm Roechling on the one hand, and of the administrative organization of the Voelklingen company on the other hand.

1. With respect to the firm—Seventy-two members of the Roechling family constituted a family company which owned the entirety of the shares of the following three companies (GmbH):

a. Roechling Iron and Steel Works in Voelklingen, with a capital of RM 36,000.

b. Roechling Brothers KG., Ludwigshafen, with a capital of RM 4,300 (coal).

c. Roechling Brothers, iron dealers, Ludwigshafen with a capital of RM 3,600.

The first two companies had numerous branches in Germany and abroad.

2. With respect to the administrative organization—The Roechling Iron and Steel Works in Voelklingen, the management of which was taken over by Hermann Roechling in the year 1910 after the death of his father, were among the most important smelting enterprises in the Saar area, with an annual production capacity of 700,000 tons of steel. They comprised—

An Aufsichtsrat (supervisory board)
A business management board (Geschaeftsfuehrungsrat)
A directorate

The defendants held the following positions in the two last-mentioned administrative organizations (none of them belonged to the Aufsichtsrat):

Roechling, Hermann: president of the business management board,

von Gemmingen-Hornberg: (1) vice president of the business management board, (2) president of the Directorate, (3) Betriebsfuehrer (works manager), that is, the representative of the enterprise *vis-à-vis* these administrative authorities which dealt with questions of manpower.

Rodenhauser: managing director, a member of the Directorate, and a Prokurist of the concern.

Maier: commercial director, a member of the Directorate, and Prokurist of the concern.

Roechling, Ernst: If not *de jure,* then at least a *de facto* member of the business management board.

1. Hermann Roechling

Hermann Roechling, who was at first general commissioner for the control of the smelting works in the Moselle and Meurthe-et-Moselle areas, and later on, as emphasized by the judgment which has been contested, the actual dictator of the iron production in Germany and the occupied countries as a result of his nomination as president of the Reich Association Iron, "RVE," and as Reich Plenipotentiary, commenced to carry out economic plundering—on the strength of his official positions and within the sphere of the instruction he received from the Reich Association—by means of the following actions:

a. Systematic plundering of industry, forcing the concerns of the occupied areas to work for the German war potential, and spoliation.—Immediately after the invasion of Poland in 1939 Hermann Roechling—on the basis of steps taken by himself—was

entrusted with the management of important iron works of that country (Laura and Koenigshuette). Not content with the management of these two enterprises, he insisted that he should gain personal possession of them, as he himself states in his letter of 19 December 1939:

> "We have received these enterprises on account of our special position with respect to the war economy * * *. Thus we will achieve the aim of once and for all gaining personal possession of these enterprises only if—by our entire behaviour—we emphasize and pursue to the utmost the fundamental principles which national socialism represents, and if—apart from this—we prove in this instance too that we are reliable pillars of support for the policy of the Fuehrer, that is to say, that we must carry out a policy of absolute Germandom in this respect insofar as this is at all conceivable. This is the most deep-rooted reason for the fact that we have been treated with such great friendliness from the beginning. If we do not act in accordance with these principles we may be entrusted with the management of the works, but it is doubtful—to say the least—whether we would receive the enterprises as personal property."

After 18 months Hermann Roechling gave up these managerial positions in order to devote his time to the French plants which were located closer to his Voelklingen center.

Indeed, after the invasion of France in June 1940, he secured his appointment as General Plenipotentiary for the enterprises in the Departments Moselle and Meurthe-et-Moselle.

While Steinbrink held the same office in Belgium, the north of France and Luxembourg, restricting himself to controlling activities, Roechling in his capacity as General Plenipotentiary turned out the directors of the plants in the Moselle and the Meurthe-et-Moselle Sud during the period from June 1940 to February 1941. These plants, with a capacity of 65 percent of the French production, he then put in operation again as far as this was possible. He used the available warehouse stocks or sold them in order to obtain ready money. Thus he acted as owner and master and thereby exceeded the authority conferred upon him, for it was not until 27 March 1941 that he was appointed administrator in the Meurthe-et-Moselle Sud by an order of the Military Commander which had no retroactive power. From February 1941 to March 1944 Goering had the iron works in the Moselle divided among various German firms (with the right to acquire the plants by purchase from the German Government after the cessation of hostilities) ; in this connection Hermann Roechling had the plants of the Société Lorraine Minière et Métallurgique at Thionville

(Karlshuette) assigned to him, the management of which already devolved upon him by virtue of his administrative office. He continued his activity as Plenipotentiary General in the Moselle and the Meurthe-et-Moselle Sud.

The argument brought forward by him that he had only resumed possession of a plant which was taken away from him after the war of 1914–18 cannot be accepted, for at that time he had received an indemnity from his government for this expropriation. The act committed by him constitutes, especially in this case, a robbery. The point of view adopted in this connection that the Reich had annexed a part of the French territory, if not *de jure* then at least *de facto,* and thus Hermann Roechling derived his rights from his government, and consequently no blame could be attached to him in this respect, cannot be admitted. Knowingly to accept a stolen object from the thief constitutes the crime of receiving stolen goods; this interpretation—which moreover is logically correct—is set forth again in the judgments of 31 July 1948 and 30 July 1948 (Krupp and I.G. Farben).*

The letter states:

> "This seizure was based on the annexation of Alsace to the Reich and the supposition that property left in Alsace by Frenchmen who were no longer residing there could be treated in a way which was completely contrary to the obligations of the occupying power. The attempt to annex Alsace to the Reich was void according to international law and thus constitutes an offense against private property rights and a violation of Article 46 of the Hague Convention."

In April 1941 Hermann Roechling was also assigned the *"Tréfileries et Cableries Julien Wuerth at Reichshoffen"* in the possession of which he had actually been since June 1940. In September of this year, in order to put this plant into operation, he had already ordered his cousin, Ernst, to bring back from France a considerable number of machines which at the time of the invasion the owners of the plants had transferred to Beaugency (Loiret) where they also possessed plants.

From the moral point of view it is interesting to point out the protests which Hermann Roechling transmitted to the German authorities and in which he expressed his dissatisfaction with the "slice of the cake" which he had been given, for it was his desire to obtain possession of the ore, and coal mines in the Department Moselle as well as of the steel plants at Rombas (Moselle).

Thus he actually wrote to Goering on 22 January 1941—

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* United States *vs.* Alfried Krupp, et al., Case 10, volume IX, this series, and United States *vs.* Carl Krauch, et al., Case 6, volumes VII and VIII, this series.

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"I can by no means accept the distribution of the Lorraine possessions as proposed by you. Accordingly, the two smallest plants are supposed to be assigned to the plant owners who had the greatest difficulties to contend with, the ones in the Saar district. I would regard a transfer of management from Rombas to Flick as a downright personal affront. He made himself rich while we were waging the hard struggle against the French. I took up this struggle in 1919 and carried it on up to the return of the Saar district without any financial support from the Reich. I concerned myself with processing low-grade ores at a time when nobody had yet thought of it and fought against the unanimous disapproval of the German metal industry. If it is now the intention to place the plants of Lorraine into the hands of those people who have always made good profits under all governments in Germany and to give nothing to those who can point at services rendered in so many fields, then those persons will be rewarded who have never assumed any political or business risks, let alone any personal risk."

The following clearly established facts must also be set forth to the charge of Hermann Roechling, which on the one hand, constitute simple economic spoliation in favor of the Reich and, on the other hand, spoliation and robbery in favor of his firm; but which in both cases constitute war crimes:

1. The removal of the *rolling-mill power installation of the plant at Joeuf,* (Meurthe-et-Moselle) which in 1943 were shipped to the Ukraine by order of Hermann Roechling. This case involved a considerable amount of material for, contrary to the assurance given by the defendant in the session of 19 March 1948, according to which it had been only one single generator requiring three or four freight cars, actually 40 freight cars were needed.

It must also be pointed out that General von Stuelpnagel, in a report of 8 October 1942 to the Armament Ministry, drew attention to the difficulties involved in obtaining the consent of the French to the removal of the electric rolling-mill equipment to the East; he added that, thanks to the valuable cooperation of Hermann Roechling, the French Government gave its consent to the dismantling of the Joeuf rolling mill. The defendant raises the point that in this way he had received the consent of a government which he considered to be the legal government of France. However, there is no doubt of the fact—no matter what one's opinion may be about the legality of this government—that every agreement with it was obtained only by means of coercion.

Finally, the removal of this material was made the subject of a protest filed by the French Government for noncompliance with

the provisions of this agreement. The decisive part which was played by Hermann Roechling in this operation, which constitutes an act of economic spoliation in the interests of the belligerent power, must be particularly noted.

In addition an electro motor was removed from the Joeuf plant and transferred to the Karlshuette at Thionville. Roechling regarded this plant as definitely his future property, so that this constitutes a robbery.

2. The removal of the *rolling mill of Ymuiden* (*Holland*), which was also dismantled at the request of Hermann Roechling in order to be transferred to Watenstedt (Brunswick) in 1943, required 12 ships because of its magnitude. This is an act of economic spoliation.

3. The removal of the *"Halles D'Angleur-Arthus"* (Belgium) which was effected on Roechling's initiative and which was dismantled in 1943 in order to be transferred to Russia, as appears from the statement made by Mr. Perret, constitutes an act of economic spoliation.

4. The removal of a 950 ton iron framework which belonged to the *Société de Saint Gobain* and which was dismantled in this company's plant at *Cirey* (Meurthe-et-Moselle) and shipped to Voelklingen despite the opposition of the owners, was intended to enable Hermann Roechling to produce a certain kind of war material in his Voelklingen plants.

The defendant alleges that this case involved a seizure by German authorities. From a letter dated 12 May 1942 addressed by the Roechling firm to the Société de Saint Gobain it is, however, apparent that the seizure was only effected after private negotiations between the "Société de Saint Gobain" and the Roechling firm had failed of their effect, and that at the time of the dismantling of the sheds on 9 July 1941 the owners wrote to Hermann Roechling in order to protest against this seizure which was carried out at his request and in his favor.

All these acts constitute unlawful seizure of property, which belonged to private persons in the occupied countries, in violation of the Hague Convention.

On the other hand, the defense has advanced the argument that the returning of property after the war, which, incidentally, was not voluntary, should be taken into consideration; however, this argument is irrelevant and immaterial, as the restitution of unlawfully acquired property does not eliminate the fact that a punishable offense has been committed.

When, during the period from March 1944 until the liberation, the French plants were returned to their owners, they nevertheless remained under the strict supervision of Hermann Roechling,

who continued in the interest of the German war potential, to demand peak outputs of them.

Although it is impossible to give exact figures on the results achieved since Hermann Roechling was appointed, it is necessary to point out that in March 1944 the Germans celebrated the mining of 100 million tons of ore which had been mined in the pits located in eastern France. A large proportion of the entire yield was allocated to the enterprises under the direction of Hermann Roechling.

As early as 20 November 1942, Hermann Roechling himself mentioned in a lengthy memorandum to Goering "Steel during wartime (Stahl im Kriege)": "The fact that we could gain control over the Minette area (Meurthe-et-Moselle) has decisively increased our war potential."

The above explanations demonstrate abundantly the part which Hermann Roechling played in the systematic spoliation of the occupied countries. Moreover, as early as 1942 he, himself, mentioned to Goering in a memorandum of 20 January 1942 that iron and coal for all the fields which were not connected with the actual war economy were made available for the civilian populations of the occupied countries only in minute quantities.

This very same Hermann Roechling worked out the plan for the removing of machinery in the occupied countries with the aim of shipping it either to Germany or Russia, in order to start in those countries the operation of iron plants which would work for the German war potential. On 23 December 1941 he wrote to an officer in Russia—

> "The best course would be, I think, to remove from the occupied territories such as Meurthe-et-Moselle, possibly Belgium and northern France, the necessary equipment for reactivating the plants over there. Some time ago I suggested to Mr. Pleiger to have the entire iron mill of Joeuf transported to Mariupol."

Consequently, Hermann Roechling is guilty of war crimes in connection with the above-mentioned points. He is guilty because he forced the factories in the occupied countries to produce maximum quotas for the German war potential, and because he was responsible for taking away essential equipment belonging to factories in those countries.

b. Systematic Financial and Commercial Spoliation.

1. In February 1944 Hermann Roechling and his accomplices and helpers induced the French Government to have a sum of 180 million francs credited to a company, the *"Société de Crédits et d'Investissements,"* which was closely aligned with Germany. (This company was founded on 5 February 1943 in Paris by

Kreuter, Hermann Roechling, and Buerckel; it was the aim of this company to obtain investments for those industrial enterprises which were essential for the German war economy.) The amount which the French Government had advanced as a credit was then credited to such enterprises which were controlled by Roechling in his capacity as Reich Deputy, in order to reduce a considerable deficit. The reason for this deficit was that, following an instruction of the German Government, selling prices had been fixed at a lower rate than production costs. This instance constitutes a characteristic type of spoliation of public property with the additional contributing factor that the funds, thus gained, served the purpose of continuing operations in such factories which, in spite of the Hague Convention, had been compelled to forge arms against the citizens of the country which had to pay for the credit transfer.

2. The purchases of the Roechling enterprise from the official German bureau, the Raw Material Trading Company (Rohstoffhandelsgesellschaft) "ROGES," whose activities consisted in selling raw materials, machinery, and other items of all descriptions which came from the occupied countries to industrialists in Germany, amounted to approximately RM 558,000 for the purchasing department and to RM 175,000 for the department in charge of booty. No doubt, this was another method of economic spoliation and of a type which the judges of the American Military Tribunal had clearly defined in the Krupp case.

This company, which had been established by the German authorities in December 1940 for the purpose of utilizing the raw materials of the occupied territories in western Europe and to expedite their use for the German war economy, virtually covered in those countries all raw materials, machinery, iron, metals, with two systems—

(*a*) Goods which had been seized without proper procedure were called "booty."

(*b*) Special German agencies purchased goods, particularly through black market channels, and they were called "purchased goods." Upon request, such goods were allocated to various German firms; among them was the Roechling company.

The conditions under which this allocation system operated prove that the German industrialists were well aware of the origin of such goods. Thus, "The invoices for purchases obtained through black market channels were forwarded to the company concerned, together with the shipment," as the judgment of the United States [Nuernberg] Military Tribunal in the Krupp case has explained. The invoices to the various companies supplied by ROGES showed the same amounts which it had paid for the indi-

vidual purchases. However, the ROGES did not know the value in the case of booty goods, because it had not paid for such goods; in such cases, the goods were sent to the company concerned without an invoice and the price was subsequently agreed upon between the company and the Reich bureau. It was only then that the firm received the invoice. This indicates clearly and convincingly that the various companies knew when shipments arrived without an invoice being sent on at the same time, that such goods were booty, contrary to the goods which government agencies had acquired through black market channels.

Thus it has been proved sufficiently that Hermann Roechling, like all other German industrialists in the same circumstances, was a receiver of looted property.

3. The *Société "Lorsar,"* a branch of the Roechling Trust in Paris, operated as procurement agency during the war.

According to the opinion of such experts as Bieuville and Bernard, this agency had procured in France metal products to the value of 500 million francs—according to the defendants' own statements it was only 120 million francs—in order to resell them to various German offices in the Reich or in the occupied countries. [Wehrmacht, Luftwaffe, German Navy, Organization Todt.]

All settlements of purchases concluded in the above-described manner were fictitious; either, settlements were effected through the so-called clearing account, although this procedure could not be considered actual payment because Germany did not compensate France with other goods, or the amounts were booked under occupation costs.

In this connection the International Military Tribunal has stated:*

> "In many of the occupied countries of the East and the West, the authorities maintained the pretense of paying for all the property which they seized. This elaborate pretense of payment merely disguised the fact that the goods sent to Germany from these occupied countries were paid for by the occupied countries themselves, either by the device of excessive occupation costs or by forced loans in return for a credit balance on a 'clearing account' which was an account merely in name."

4. As to the attempt to secure the Perrin patents concerning the steel production methods of the Société Electrochimie d'Ugine, all that could be established is that during the talks and negotiations in connection with this transaction threats of seizure were possibly made. However, the directors of the company remained

* Trial of the Major War Criminals, op. cit., volume I, page 240.

firm in their refusal and a seizure did not take place. Incidentally, it appears as though Roechling wanted those patents more for himself than for his country.

In this case, his action cannot be construed as attempted robbery, so that the facts for a punishable offense are not existent.

In summing up, Hermann Roechling is guilty of the above mentioned war crimes enumerated in counts one, two, and three, as originator of a system of spoliation of industrial, financial, and commercial enterprise. He is not guilty concerning the Perrin patents.

2. Ernst Roechling

Ernst Roechling, as delegated administrator of the Société "Lorsar" *Vente des aciers fins de Lorraine et de Sarro,* and of the Société "SAFFAS," *Forges et Acieries de la Serre,* had been domiciled in Paris as from 1930.

During the occupation period he reestablished his offices and soon took up his activity as Hermann Roechling's deputy in his capacity as the latter's liaison and executive official. He was fully aware of the significance of his own role and of Hermann's activities. Furthermore he had been appointed as State Plenipotentiary (Landesbeauftragter) for France and thus acted as representative for Hermann Roechling as president of the RVE and as Reich Plenipotentiary. Although he declares that he was never active in this capacity, his assurances are contradicted by a document dated 30 March 1944, which was addressed to the Aere Bank, and which bears his signature as Plenipotentiary for Iron and Steel in the occupied or incorporated territories, Paris Office. At all events, his position as liaison and executive official—far from constituting a reason for his acquittal—in fact constitutes the main incriminating evidence against Ernst Roechling. The role which he played in the enslavement of the French industry and in its systematic spoliation, was of great importance.

After the attempted assassination of Hitler of July 1944, Ernst Roechling was persecuted because he had given shelter to a relative of one of the conspirators. A letter which Hermann Roechling addressed to Hitler on his behalf gives a correct picture of the importance of the part played by Ernst Roechling.

> "Since 1940 he has, with a fortunate knack in his dealings with the French, displayed an extraordinary activity in improving Franco-German relations each time it was necessary. I have taxed his capacities to a very great extent, and it is largely due to my cousin that I have had considerable success in my dealings with the French steel industry to such a degree that I fear that a large section of the people who cooperated with

me, have already been liquidated or will be liquidated in a short time. We complemented each other very well. His fascinating amiability won over the French, while I involved them in technical problems and developed their interest in our work. He is undoubtedly a person who has done much in regard to German-French relationship in that it has been possible to achieve much which would have been impossible for us to accomplish without him."

Even if the importance of the services rendered by Ernst Roechling were perhaps, of necessity, slightly exaggerated, this letter nevertheless does contain the truth.

Furthermore Ernst Roechling acknowledged in the course of the first trial that he was never subjected to coercion, that he was well aware of the fact that Hermann Roechling had set himself the task of increasing the war potential of the Reich, and that he assisted him voluntarily in this task in France (session of 19 March 1948).

A particularly clear indication of the part played by Ernst Roechling is given by the following events:

*a. Advance of 180 million by the Société de Crédits et d'Investissements.**—The activity and role of this company in connection with the allocation of 180 million by the French Government for the purpose of covering the deficit of the Meurthe and Moselle South concerns which were subordinate to Hermann Roechling, have been dealt with above. It was Ernst Roechling who, as a result of his personal relations to the French Ministers, Bichelonne and Cathala, was able to effect this robbery.

He furthermore managed to prevail upon them to take over, on account of France, the expenses accruing to Hermann Roechling as Reich Plenipotentiary in the form of a 0.6 percent commission, which, for March 1944 alone, amounted to more than one million. He was thus an accomplice of Hermann Roechling in this action which the latter is proved to have committed. His participation is, in particular, clearly shown in the above-mentioned excerpt from the letter addressed to Hitler—

"* * * very considerable successes * * * which at present go so far that I fear that a large section of the people who cooperated with me, have already been liquidated or will be liquidated in a short time * * *. We supplemented each other very well."

and furthermore:

"This fact was certainly not directly due to my cousin's efforts, but indeed there was such mutual confidence between

* Credit and Investment Company.

a large section of the works managers and ourselves, achieved with the constant support of Minister Bichelonne, that, in spite of some prevailing reticence, it continued to be always possible to accomplish matters without having to use force. Our relationship to Minister Bichelonne was always excellent and for this my cousin was virtually the guarantor. Furthermore in February of this year he very cleverly directed negotiations regarding the return of the concerns in the southern Meurthe-et-Moselle area to administration by their French owners in such a manner that we were able to effect this return without having to fear that we should not achieve that which we had previously achieved. Yes, these negotiations also created the prerequisites necessary for our obtaining, in agreement with the French, a greater influence in the Longwy district, in which our position had hitherto not been as clearly established * * *. On the other hand, he is undoubtedly a person who has done much in regard to German-French relationship, in that it has been possible to achieve much which it would have been impossible for us to accomplish without him. Only in this way could these successes be achieved, particularly in view of our inability to gain sufficient power and force from among the French people themselves, with which to dominate them."

Finally reference must be made to Bichelonne and Cathalas' letter dated 2 February. The following excerpt from it is significant:

"In your letter of 2 February you requested from us a guarantee by the French State, to the effect that the loan which you raised with the Société de Crédits et d'Investissements, 52, Avenue des Champs Elysées in Paris on behalf of your administration of the French concerns in the so-called O.R.A.M.S. zone, would be repaid. Following upon our negotiations with Mr. Ernst Roechling, we beg to inform you that we agree to guarantee the repayment of the loan which was raised under the given conditions and amounts to 180 million. We stipulate, however, that the agreement—the details of which were given in our previous letter of 31 January of this year—shall be concluded and carried out by 20 February next."

b. Economic investigations with a view toward systematic spoliation.—In his capacity as "Reich Plenipotentiary" for Iron and Steel in the occupied territories, Paris, Ernst Roechling received very detailed reports on 1 September 1943 directly from the office of Rohland, the vice president of the Reichsvereinigung Eisen, and specialist for the construction of armored cars, with regard to investigations concerning the French production potential.

These investigations were carefully carried out by Ernst Roechling or his offices in thirteen important concerns, and the results thereof were forwarded to Rohland's office.

After at first having declared that these investigations were instigated by the military commander and that he could not explain how it was possible for the reports to have been found in the "Lorsar" archives, the defendant stated that he could supply no details, since he was not a metallurgist, that the required information was not secret, and that such information could be obtained from reports on iron works and from prospectuses regarding loans and debentures.

From the documents submitted, however, it is clear that the information that was requested and supplied was calculated to benefit the military power of the Reich and that it necessitated exacting investigations of which Ernst Roechling cannot assert that he can remember nothing. Mere reference to prospectuses or agreements could not suffice to provide the information requested, particularly in connection with the production potential of these enterprises at that time, the production required for the current quarter, the possibility of increased output, taking into consideration the manpower available at that time and an increase of raw material allocations.

In this present case there is not the slightest difficulty in establishing the fact that Ernst Roechling, in carrying out the investigations in questions, willfully participated in plans and projects designed to implement the systematic spoliation of France (*Art. II, par. 2 of Law No. 10*).

c. Acquisition of business participations through the Société de Crédits et d'Investissements.—In particular, the Société de Crédits et d'Investissements aimed at obtaining participations in the business capital of French enterprises, in order thereby to increase the Reich war potential. Ernst Roechling was a member of the Verwaltungsrat of this company.

It is definitely established that the following operations were carried out:

(*a*) Acquisition of the majority of the shares of the company *"Entreprise Industrielles Chartentaises"* for the construction of railroad cars (37,000,000 francs).

(*b*) Investment of 120,000,000 francs in the *"Société des Travaux et Mines du Midi"* which, in fact, became a subsidiary of the Société de Crédits et d'Investissements for the purpose of exploiting bauxite deposits to increase German military power.

In July 1944 the military commander wrote to the Ministry for Armament that the entry of Germans into the "Société des Travaux et Mines du Midi" signified the achievements of an economic

position in the bauxite field which could be maintained after the war, while all previous attempts had failed.

It is not uninteresting to note that, shortly before the liberation of France, the leaders of the "Société de Crédits et d'Investissements" endeavored to have their operations transferred to a Monaco company under their control so that they might retain the property they had acquired, even after Germany's defeat.

(*c*) An advance of 15 millions—with guarantees to the Directorate such as are always usual with such transactions—to the *"Société des Moteurs René"* in order to adapt the plant installations to the manufacture of more important products for the Reich military power.

(*d*) Advance of 3,160,000 francs to the company *"Enterprise Forestieré de Provence"* to finance German orders.

All these events are proven by the expert opinions of Messrs. Bieuville and Heusse.

It cannot be assumed that the administrator of a company (and Ernst Roechling held this office in the Société de Crédits et d'Investissements; he was indeed, together with Kreuter, its founder) which was formed for the purpose of committing criminal acts and whose activity consisted thereof, should be absolved of criminal responsibility because he played no specific part. He could only escape this responsibility by proving that he was only a *pro forma* administrator, had been deceived as to the true purpose of the company, and had known nothing of its operations. No such excuse could be assumed in this present case, however, or has it been put forward either.

In order to counter the objection that these participations could not constitute a punishable act, reference must be made to the affirmative decision made by the United States [Nuernberg] Military Tribunal in a similar case, namely, the I.G. Farben case (judgment of 30 July 1948). This ruling establishes unequivocally that acts of this nature are violations of the provisions of the Hague Convention and constitute spoliation.

d. Ernst Roechling's role in the operation of the so-called Lorsar purchasing office is of decisive importance, for he was the delegated administrator of this company. Its criminal character was discussed in connection with the statements on the acts with which Hermann Roechling was charged.

Thus, Ernst Roechling is an accessory to the war crimes proved against Hermann Roechling.

e. Finally Ernst Roechling's activity is particularly well characterized in the matter of the "Tréfileries* Julien Wuerth, Reichshoffen." In this case there are tangible, material actions.

* Wire manufacturing works.

The Société Anonyme Tréfileries Julien Wuerth operated two plants, the one in Reichshoffen (Bas-Rhin), the other in Beaugency (Loiret). The plant in Reichshoffen encompassed installations for the manufacture of wires and steel cable of a certain category. The Roechling firm possessed no similar installations.

The Roechling firm took possession of the plant in June 1940. In April 1941, it succeeded in obtaining a lease contract from the German Civil Administration of the Department Bas-Rhin and a promise of a sale in respect of the plant. A short time later it acquired the plant as its own property and founded a "Gesellschaft mit beschraenkter Haftung" which was designated "Drahtindustrie" and had a working capital of 450,000 marks. It should be recalled that, according to the judgment of the United States Military Tribunal in the I.G. Farben case, this transaction constitutes spoliation.

In September 1940 Ernst Roechling, who was staying in Paris, demanded of the owner, Mr. Moritz, that certain machine parts which had been removed to Beaugency, be delivered to him. Mr. Moritz testified on oath that, on his refusal, Ernst Roechling informed him that if he persisted in his refusal his two directors, Zurnicer and Hourdin, would be arrested.

Ernst Roechling similarly produced a document dated 30 September and signed by Hofacker which empowered him to take all necessary steps in order to gain possession of the machines which had been removed to Beaugency, if necessary, with the aid of armed forces.

After various conversations and after Mr. Moritz had seen that the threats would be followed by acts if he persisted in refusing, he delivered the machines.

Ernst Roechling admits having demanded the machines from Mr. Moritz. He similarly acknowledges having produced a search warrant, but definitely denies having threatened Mr. Moritz with the arrest of his two directors if he should persist in his refusal. This last point, moreover, is of secondary importance. At the time when Reichshoffen was evacuated by the Germans, 34 trucks and 4 freight cars loaded with industrial material from the plant were sent to the Reich.

Thus Ernst Roechling must be declared guilty of the acts cited under paragraphs *a* to *e*, which constitute war crimes.

3. Von Gemmingen-Hornberg

Von Gemmingen-Hornberg, Hermann Roechling's son-in-law and president of the Directorate of the Roechling Stahlwerke in Voelklingen does not, according to the evidence of the case, appear

to be guilty as an accessory or accomplice of Hermann Roechling, of the criminal acts of an economic nature.

In fact, there can be no question of his personal responsibility as a result of specific action; it is not permissible under criminal law to deduce his responsibility solely from the office which he held. Accordingly, the contested judgment must, in this respect, be wholly and completely confirmed.

4. Maier

The same applies, from the economic point of view, to Maier, who held the office of Director of Finance and, in this capacity, belonged to the Voelklingen Directorate.

It is not out of place to note that he did not belong to Roechling's family circle.

B. *Utilization of Labor*

I. The policy of the Nazi government.

The compulsory utilization of nationals of the occupied countries (prisoners of war, deported or allegedly voluntary workers) is one of the most important elements of the German policy of domination. Hitler repeatedly stated this himself, especially in a speech he made on 9 November 1941 quoted in the "Voelkischer Beobachter"—

> "The territory which now works for us directly comprises more than 250 million people; the territory in Europe which works indirectly for this struggle, comprises even now more than 350 million people.
>
> "As far as the German territory is concerned, the territory which we have now taken under our administration, there should not be any doubt about it that we shall manage to utilize it to the full."

This doctrine has been brought out in the argumentation to the decree of 21 March 1942 by which Sauckel is appointed Plenipotentiary General for the Utilization of Labor—

> "In order to guarantee that the necessary manpower shall be available for the entire war economy, especially for the armament industry, it is necessary to direct the utilization of all manpower in a unified manner, arranged to meet the requirements of the war economy, such manpower to include all recruited foreigners and prisoners of war, and furthermore to mobilize all manpower that can still be made use of in the greater German Reich, including the Protectorate, as well as in the Government General and in the occupied territories. This task will be carried out by Reichstatthalter and Gauleiter Fritz

Sauckel as Plenipotentiary General for the Utilization of Labor within the framework of the Four Year Plan. In this capacity he is immediately subordinate to the Plenipotentiary for the Four Year Plan."

Sauckel himself stated the following in his speech in Poznan on 6 February 1943:

"The extraordinary hardship of the war has compelled me to mobilize in the name of the Fuehrer many millions of foreigners for the employment within the entire German war economy and to demand the highest performance from them.

"The purpose of their utilization is to guarantee the labor necessary to safeguard the war potential required for the struggle to maintain the life, the liberty—that is, in the first place that of our own people, but also to maintain our entire western culture—of all these people who in opposition to the parasitical, Jewish-plutocratic exploiters, possess the honest wish and the power to shape and further develop their own life by their own work and achievement.

"Such is the world-wide difference between that performance of labor which was demanded at the time by the Versailles Treaty, by the Dawes or Young Plan in the form of enslavement and labor dues on behalf of world power and the mastery of the Jewish race, and the mobilization of labor which I, as a National Socialist, have the honor to prepare and carry out, in order to contribute to the struggle for the freedom of Germany and its allies."

The plan of the government of the Reich did not only provide for the utilization of foreign workers, but also carried with it the intention to exterminate them by means of work, as is shown in the record of a meeting held between Goebbels and Thierack on 14 September 1942—

"Regarding the extermination of asocials, Dr. Goebbels holds the point of view that all Jews and gypsies, as such, Poles who had about 3 to 4 years penal servitude to undergo, Czechs and Germans who had been sentenced to death or penal servitude for life or preventive detention, should be exterminated. The best idea was extermination by means of work."

Those principles were *carried out* in the occupied countries by the following means:

The conscription of workers.
The drafting of so-called voluntary foreign workers.
The introduction of labor conscription.
The systematic utilization of prisoners of war.

The measures thus applied exceeded by far the limits set by Article 52 of the Hague Convention, as according to these provisions it is only permissible to demand services to cover the requirements of the *army of occupation* within the framework of the resources available in the country, provided that the inhabitants are as a result thereof not compelled to take part in military operations against their own country. It is a fact that, on the one hand, the drafting for work was carried out for the purpose of the entire war effort of the Reich and not solely to cover the needs of the army of occupation of the country in question and that, on the other hand, workers were frequently transported from the occupied countries to the Reich; and this to the detriment of the economy of these countries and, finally, that prisoners of war were employed for work, which exceeded the limits imposed by the provisions of the Hague Convention. A document entitled "Top Secret" dated 2 November 1941, "Attitude of the Fuehrer," "Armament Industry," reads as follows:

> "*Attitude of the Fuehrer* on the question of employment of prisoners of war in the war economy fundamentally changed. Up to the present a total of 5 million prisoners of war—so far employed 2 million. Considered for employment—Frenchmen, specific employment, transfer to armament industry.
>
> "*Armament plants.*—In the first place plants producing armored vehicles and guns. Possibly also part manufacture of airplane engines."

It is opportune to draw attention to the fact that the same violation of Article 52 of the Hague Convention caused such indignation during the war of 1914–18; that Wilhelm II was compelled to discontinue deportations in 1917 and to promise that the deportees would be sent home.

Even the conditions under which the various categories of workers were employed were as inhumane as can be imagined, such as unhygienic accommodation, insufficient food, etc., just as was laid down in Sauckel's decree of 29 May 1942—

> "All these people must be fed, accommodated, and treated in such a manner, that while being utilized in the most economical manner imaginable, they put up the highest possible performance."

The German industrialists, however, did not show any disinclination whatever towards these inhumane regulations; on the contrary they often suggested such measures.

Before proceeding to the individual case of each defendant, it is expedient to state here once again, as has also been done by

the Nuernberg Tribunal, that in this case international law does not only apply to the actions of the sovereign states but lays down the principle pertaining to the responsibility of each delinquent. In the manner expressed by this high jurisdiction "it is persons and not abstract entities who commit the crimes," the punishment of which is demanded by international law.

In other words, the defense on the part of the defendants to the effect that their actions were in accordance with the orders given by the Nazi government, cannot be permitted. This fact, as already mentioned, can, according to Article 8 of the Statute, only be regarded as a mitigating circumstance.

II. Parts played by the defendants.

The prosecution charges the defendants with having, within the framework of their various professional or administrative positions, participated in the slave-labor program of the Third Reich and in the utilization of prisoners of war in tasks connected with war operations.

The prosecution further charges them with the rough treatment and ill treatment to which the deported workers and prisoners of war are said to have been subjected.

In respect of this count of the indictment the actions are to be divided into 4 different categories and are to be dealt with separately, namely—

1. The actual deportation of civilians of an occupied country for forced labor, that is, their compulsory transfer.

2. The utilization of these slave laborers.

3. The utilization of prisoners of war in tasks connected with war operations and their ill treatment.

4. The rough treatment and ill treatment of the workers deported for the purpose of slave labor.

1. *Deportation of civilians of an occupied country for compulsory employment.*—The evidence submitted and the findings in the judgment of the IMT in the case against Goering, *et al.*, have shown that the program for deportation for the purpose of slave labor was worked out by the government of the Reich. It was an actual government program which had been arranged by the State and was carried out by its agencies.

In the application of this program the deportation of civilian workers was ordered and carried out. This does not exclude the fact, however, of a person having participated in the execution of this program, who was himself far removed from the administrative agency or from the government authorities which had been instructed to carry out the program and which had worked it out and had issued orders with a view to its execution. It has to be proven, therefore whether, and if this is the case, in how far

the defendants participated in the execution of this criminal program.

This does not apply to *Rodenhauser, von Gemmingen-Hornberg, Maier, and Ernst Roechling,* as none of these defendants held a position or committed actions which can be connected with the carrying out of the deportations as such, or with the compulsory transfer of persons belonging to an occupied country.

This does not apply with regard to *Hermann Roechling* in view of the high position which he occupied in the war industry of the Reich since 29 May 1942, and also in view of the manner in which he carried out his work in connection with workers who were intended for the iron industry which was under his control.

It should be pointed out briefly that the approximate number of necessary workers was communicated on 21 March 1942 by the Minister for Armaments and War Production, Speer, to the Plenipotentiary General for Labor Allocation, Sauckel, who had been appointed by Hitler. The workers registered by Sauckel were allocated to the various industrial branches and enterprises according to Speer's instruction, as the latter knew that he was to be given foreign workers who had been made temporarily available under duress.*

In particular with regard to Speer's connection with the forced labor program, the International Military Tribunal has concluded that he was guilty of the crime of deportation and mobilization of civilian workers.

It is a fact that the requirements reports, sent by Speer to Sauckel, concerning the allocation of labor were in turn based on the requirement reports submitted by the responsible leaders of German war industries to Speer. In particular, Hermann Roechling, the chairman of the Reich Association Iron, RVE, was one of those leaders and, starting 29 May 1942, he was also the director of the Industrial Group for the Iron Producing Industry and Reich Plenipotentiary for Iron and Steel in the occupied territories.

It is interesting to note that he applied for these positions and at the same time for the dictatorial powers connected therewith. (See his letter and report of 20 January 1942 to Goering.)

The official document appointing Hermann Roechling to the position of "Reich Plenipotentiary in the occupied territories" stipulates that he make the necessary arrangements through instructions and directives which would be suitable to expedite the work with which he was entrusted. Very soon, the labor problem became the most urgent one of the measures to be taken and Hermann Roechling worked actively in order to supply as many workers to the iron industry as he deemed necessary.

* Trial of the Major War Criminals, op. cit., volume I, page 243 *ff.*

The Court finds that Hermann Roechling's responsibility for the execution of the forced-labor program was of the same type as that with which the International Military Tribunal has charged Speer. For, the applications which were forwarded by Speer to Sauckel, which were the cause for the deportation of civilian workers, were drafted on behest of the Reich Plenipotentiary Hermann Roechling, president of the RVE, in order to obtain workers for the iron industry.

Moreover, the German industrialist, Flick, has confirmed this fact. He has stated that the plant executives concerned forwarded the requirement reports for foreign workers for the iron industry to the chairman of the RVE, Roechling, who in turn submitted them through the Minister, Speer, to Sauckel.

Hermann Roechling has admitted this fact. In a statement, dated 6 November 1945, which he made for the United States occupation authorities in Germany, he said that all manpower requirements were submitted to Speer through the RVE, and through Speer to Sauckel. There are numerous requirement reports of this type; it will suffice, however, to mention one of them in order to illustrate the methods used. On 12 August 1942 the RVE sent a memorandum to Speer concerning the program for raising the steel production in the last two quarters of that year.

In order to put this new plan into effect, the RVE stated that 60,000 workers would be required, of whom 55,000 could be foreigners. However, on 12 August 1942, Sauckel had been in office for 5 months, and the chairman of the RVE knew in what way such foreign workers were supplied.

On the other hand, Hermann Roechling stated the following in a report of the RVE, dated 15 August 1942: "In accordance with the requirement reports submitted by the Reich Association Iron * * * Russian civilians have arrived as the first transports during the last days of July." The exact number of workers required by the RVE and of these deported workers which were made available for the RVE by Sauckel and Speer, is not known; it is a fact, however, that their number was quite considerable and that they included civilians from France, Luxembourg, Belgium, Holland, Poland, and Soviet Russia.

A statement of Hermann Roechling shows that after 1942, approximately 200,000 foreign workers were employed in the iron industry in Germany proper. Thus, Hermann Roechling was connected with the war crime of deportation for the purpose of forced labor, and he was coresponsible for the deportation of all those workers who had been assigned to the iron and steel industry as of 29 May 1942, the day on which he assumed his supreme command of this industry.

Moreover, it should be emphasized that Hermann Roechling did not confine himself to requisitioning workers, who were necessary for the realization of his objectives, from Sauckel through Speer and thus initiate the deportations; more than that, he repeatedly intervened personally not only in order to obtain more workers for the RVE at better conditions, but also in order to improve generally the efficiency of Sauckel's inhumane organization. In order to achieve this, he repeatedly took action by submitting numerous reports, proposals, and suggestions concerning the recruiting of forced labor to Speer, Sauckel, and other leading officials of the Reich.

The court finds that Hermann Roechling, in order to execute his plan for raising the production of iron, sacrificed all human considerations and demonstrated a complete lack of respect for the rights of the civilian population in the occupied countries. There is sufficient evidence to prove his attitude in this respect as well as his interventions with Reich authorities. The court deems it requisite to mention certain types of his direct interventions which show Hermann Roechling's guilt in the proper light. In a report of *22 October 1942,* in which he summarized the work of the Reich Association Iron, Hermann Roechling expressed his opinion that the fact that the recruiting of almost 2 million workers for the German economy was achieved, signified a resounding success for Gauleiter Sauckel. On *5 December 1942* he suggested in a special report to Sauckel, that battalions of young workers led by Germans be activated, that they be assigned near the front lines, so that they "would learn how to defend themselves."

On *4 January 1943,* Hermann Roechling demanded that negotiations be commenced immediately to obtain a considerable number of young Russians, aged approximately 16, in order to assign them to work in the iron industry.

On *8 February 1943,* he sent a lengthy report to the Commander in Chief, Field Marshal Keitel, entitled "Utilization of manpower reserves in occupied countries." In this report he suggested in particular the registration of men and women in Belgium, Holland, and France, as well as the promulgation of a law concerning the introduction of compulsory labor service in the interior of these countries and abroad. Finally, he suggested that some of the men thus recruited be sent to combat duty at the front and not be used as forced labor, and that prior thereto the necessary precautionary measures be taken, such as the assignment of security troops in the rear of the fighting units.

On *26 February 1943* he, himself, in a letter to Keitel of which he forwarded an original copy to Speer and Sauckel, advised

against the assigning of Belgian students for industrial work and suggested that "all intellectuals and representatives of property interests" be better assigned as soldiers, fighting against bolshevism.

On *5 April 1943,* he announced at a conference of the leading officials of the metal industry in the Meurthe-et-Moselle, that he had informed Speer and Buerckel of the desirability of discontinuing the "Ia Rèleve" [recruitment] and that "S.T.O." [Service de Travail Obligatoire—compulsory labor service] should be introduced in France for everybody up to the age of 60.

The court, basing its decision on the mass of evidence introduced by the prosecution, and in particular on the above-mentioned evidence, finds that *Hermann Roechling,* by unscrupulously using his high office and his wide powers for the benefit of the iron industry under his control, contributed largely and decisively to executing the German program of deportation for forced labor. Thus, he participated in the crime of deportation inasmuch as he, on the one hand, demanded energetically and persistently of the administration branches concerned the deportation of civilians, in order to assign them to work in the industries under his control, and, on the other hand, in the execution of his office, submitted to the supreme Reich authorities his views and suggestions as to how to improve this criminal program and its implementation.

2. *Allocation of deported workers*—It is necessary to examine individually the question of the allocation of deported workers and to determine whether the allocation alone constitutes participation in the crime of deportation for compulsory labor if the employer was not necessarily involved in the compulsory deportation from the occupied country to another for the purpose of labor allocation.

It must first be established whether Article 52 of the Hague Convention can be directly applied to this labor allocation; for this regulation forbids any services being demanded of the inhabitants of an occupied country other than those necessary to cover the requirements of the occupying troops, and demands that the inhabitants be left in their own country. These violations which are prescribed in the Hague Convention are punishable under Article II [paragraph] 1 (*b*) of Law No. 10, according to which all acts against persons which violate the laws and usages of war constitute crimes.

On the other hand, the expression "deportation for compulsory labor" as quoted in the law must be understood to mean not only the compulsory removal for this purpose but similarly the continuation of the compulsion exerted on the deported person whose

status continues to be that of a deportee until such time as compulsion ceases.

According to Law No. 10 the following are guilty of this crime: The principal, the accomplice, and whosoever approves of the crime or participates in actions connected with the commission of the crime. The employers who allocate the deportees for work or demand services of them, participate, if only by their approval, in the deportation program which could not have materialized without their intervention. Moreover, it should be stated that a case of participation solely through according approval actually appears to be very rare, since the employer almost always plays an active part in exerting compulsion on the deported persons in that, for example, he guards them, issues orders, or reports their escape.

The defendants claim that they could do nothing but implement the government program, against which they could do nothing, and that they were forced to employ the forced workers who were placed at their disposal. If it were proved, of course, that the defendants acted under compulsion, they could not be called to account under criminal law for the offenses that were committed.

Therefore it must first of all be proved in what capacity the defendants allocated the deported workers for work—

Hermann Roechling: Chairman of the Reich Association Iron and General Director of the Stahlwerke Voelklingen.

Ernst Roechling: Representative of the Stahlwerke Voelklingen in France.

Von Gemmingen-Hornberg: President of the Directorium of the Stahlwerke Roechling and representative of the enterprise in negotiations with the authorities specially responsible for manpower problems (Betriebsfuehrer).

Maier: Financial Director, member of the Directorium.

Rodenhauser: Director, member of the Directorium, specially charged with manpower problems.

The defendants *Ernst Roechling and Maier* both held positions in the Roechling enterprise which were in no way connected with manpower questions, and therefore could not be called to account for the allocation of deported workers.

Ernst Roechling's participation in crimes of deportation has already been discussed; it extends from the compulsory transfer of all persons deported from 29 May 1942 onward, to their allocation to the iron industry controlled by the Reich Association Iron. It is interesting to note here that the number of foreign workers employed in Voelklingen was on the average 6,000.

The defendants *von Gemmingen-Hornberg* and *Rodenhauser* held important leading positions in Voelklingen which were directly connected with the administration of manpower. It is shown by the evidence submitted that they not only approved of the allocation of a large number of deportees, but in addition that they also participated in the measures of compulsion directed against those deportees and in doing so went so far, as stated above, as to make themselves accessories to their subsequent maltreatment.

Accordingly Hermann Roechling, von Gemmingen-Hornberg, and Rodenhauser must be held guilty of the allocation of deportees for compulsory labor.

3. *The rough treatment and maltreatment of the deportees in order to force them to work*—The prosecution accused all defendants, in view of the positions held by them or their powers, of being responsible for the rough treatment accorded to the deportees with the intention of forcing them to work, either by consenting thereto or by instigating it.

The duty "to achieve the greatest possible output" (as Sauckel expressed it in his decree dated 29 May 1942) was imposed on the deportees under threat of rigorous punishment, and these punitive measures were employed when it was considered to be appropriate. The majority of these measures must be considered as rough treatment or ill treatment within the meaning of Law No. 10.

In the first place it must be established that the deportees in the Voelklingen plants had to work under difficult and rigorous conditions. On this point the testimony of all witnesses, the workers, doctors, medical orderlies, and guards, agrees. (Some workers, so a medical orderly declared, collapsed from exhaustion at their work.) These difficult and rigorous conditions were in particular caused by insufficient food and too heavy work, and resulted in very poor health.

However, in order to exact peak output from weak or even sick workers, who, moreover, had very little desire to perform work which was badly paid and opposed to the interests of their fatherland, the plant Directorate of the Voelklingen participated, on its own initiative, in the implementation of strict measures as prescribed in the regulations and ordinances of the Reich administration for the maintenance of working discipline and repeatedly took the initiative in a manner which exhibits conformity with the views, aims, and measures of that administration.

It must be emphasized here that a general organization of the compulsory labor left considerable room for the application of coercive measures by certain agencies of the employing indus-

try. In addition the Directorate neglected to exercise the necessary supervision over the methods employed to impose these measures on the convicted workers, and failed to make adequate protests when their scandalous misuses came to their knowledge.

As the contested judgment states, the role of the plant police (Betriebspolizei) was played by the works police (Werkschutz), the chief of which, an SS officer called Rassner, was appointed by von Gemmingen-Hornberg. In April 1943, following an agreement between the leaders of the Roechling firm and the Gestapo, a summary court was set up to punish disciplinary offenses by the foreign workers, such as repeated absence, repeated tardiness, stoppage of work, refusal to perform additional work, undisciplined conduct. At the same time a punishment camp was set up about 15 kilometers away at Etzenhofen, by agreement between the leaders of the Roechling firm and the Gestapo, to which the foreigners sentenced by the summary court were to be consigned for a maximum period of 56 days. The persons undergoing sentence who spent the night in Etzenhofen were taken to the Roechling plant in the morning and back to the camp at night. The important advantage that Roechling gained from the creation of this camp lay in the fact that the convicted workers did not stop working in his plant, whereas previously they had been lost to him immediately they were handed over to the Gestapo.

From the corroborative testimony of the former workers of the camp, the doctors, guards, and inhabitants of the village, it is shown that the situation of those undergoing punishment was inhuman. After a few hours sleep the inmates of the camp were often called out in the middle of the night and required, in a completely naked condition, to perform physical exercises. Thereafter they were taken into the Voelklingen plants and were then employed for 10 hours, even on Sundays, on the heaviest types of work, particularly in the coking plant or the pitch installation. In the evening at 1800 hours they were taken back to the camp where they were made to perform punishment exercises for several hours (crawling, running, jumping). Dogs were trained to bite the workers if they moved about the camp without running. The guards often struck the prisoners without reason. They were often locked in cellars half full of water. The food of the people who were called upon to perform this heavy work and these weakening exercises was completely inadequate; it consisted of a little bread and a soup usually made without vegetables. The inhabitants of Etzenhofen were outraged when they saw these exhausted people who could be recognized by their blue-and-white striped prisoners clothing, and who frequently collapsed when going through the streets.

Hermann Roechling and the other accused members of the Directorate of the Voelklingen works are not accused of having ordered this horrible treatment, but of having permitted it; and indeed supported it, and in addition, of not having done their utmost to put an end to these abuses. In adopting this attitude they permitted the continued existence and further development of this inhuman situation and thus, particularly through this tolerance, participated in the maltreatment within the meaning of Law No. 10.

As a result of the positions they held, *Ernst Roechling* and *Maier* were not connected with manpower matters, and their conduct can therefore not be considered as participation in these abuses.

In view of their positions and powers, this is not the case with Hermann Roechling, von Gemmingen-Hornberg, and Rodenhauser. It was Hermann Roechling's duty to keep himself informed about the treatment of the deportees; the fact that he did no longer concern himself about their fate, could only increase his responsibility. In his dual capacity as chief of the Voelklingen plants and chairman of the Reich Association Iron he had sufficient authority to intervene and to render the abuses less severe, even if he could not stop them. The contested judgment validly establishes that the witnesses declared Hermann Roechling to have had repeated opportunities during the inspection of his concerns to ascertain the fate meted out to his personnel, since he could not fail to notice the prisoners' uniform on those occasions.

Von Gemmingen-Hornberg was president of the Directorate of the Stahlwerke Roechling; he furthermore held the position of works manager, that is, as the works representative in negotiations with the authorities specially competent to deal with matters relating to labor. His sphere of competence also included contact with the Gestapo in regard to the works police.

Von Gemmingen-Hornberg declares that he was incapable of altering the conditions, of which he was aware, since the deported workers were under the jurisdiction of the Gestapo and the German Labor Front. However, the high position which he held provided him with sufficient authority to intervene and to ensure an improvement in the treatment of the convicted deportees. The contested judgment validly describes his conduct as showing negligence and lack of courage; a few measures which were apparently taken by him, can at the most be evaluated merely as extenuating circumstances.

With regard to Rodenhauser, the Court confirms the findings of the contested judgment, according to which Rodenhauser, as Director General, member of the Directorate, and Special Dele-

gate for matters pertaining to Labor, is held responsible for the working conditions established for the deportees. Together with von Gemmingen-Hornberg he organized the "Summary Court" in 1943 for the purpose of punishing disciplinary offenses. This led to the establishment of camp Etzenhofen, and these two organizations together resulted in the living conditions of the convicted foreign workers becoming inhuman. It is useless for Rodenhauser to maintain that the material conditions of the workers were dependent upon the "German Labor Front" and disciplinary matters upon the "Gestapo." Contact with the German Labor Front dates from February 1942; prior to that the Roechling works alone had been responsible for the maintenance of the foreign workers and subsequently they also had supervisory rights over the "German Labor Front." Rodenhauser, who was appointed to deal especially with labor questions, issued numerous circulars bearing his signature, which concerned discipline, the measures to be taken in the case of escape or bad work, the withholding or curtailing of food. It was particularly in a circular dated 11 December 1942 that Rodenhauser established the ruling that foreign workers who had committed disciplinary offenses, might be deprived of their hot meals for up to 3 days a week. No matter what he may say, there was no higher order sanctioning such a measure, and it is useless for Rodenhauser to refer to a document issued in 1944, which incidentally only sanctions the withholding of the supplementary food supplies.

He was in constant touch with the Werkschutz, the Summary Court and camp Etzenhofen; and the publication of the punishments imposed by the Summary Court which he carried out for the purpose of establishing an example clearly shows that, contrary to his assertions, the Gestapo was not the only authority in the works which had been instructed to punish disciplinary offenses. A visit to camp Etzenhofen and an inspection of the foreign workers' condition in the works would have convinced him of their pitiful position. However, he does not even claim to have tried to prevail upon the members of the guard in camp Etzenhofen to treat the prisoners in a more human manner, despite the fact that in his capacity of Director General he certainly had sufficient authority to remedy matters. At any rate he should at least have attempted to do so.

He has thus made himself guilty of encouraging ill-treatment of deportees employed in forced labor.

4. *Employment of prisoners of war in excessive work or in work connected with war operations—ill-treatment of prisoners of war*—The war crimes of which the defendants are accused include the employment of prisoners of war in excessive work

or in work connected with war operations, as well as the ill treatment of prisoners of war. It has been proved and has furthermore not been denied, that many prisoners of war taken from the armies of the Allies were forced to work in the German iron industry. This was done both in the works dependent upon the RVE as well as in the steel factories in Voelklingen. It has furthermore been proved that production in this industry was directly and closely connected with the war operations.

With regard to this, reference need only be made to the appeal which Hermann Roechling addressed to his coworkers after his appointment as president of the RVE. In this it is stated—

> "The main basic materials for our modern, powerful weapons are iron and steel. The more we produce thereof in the course of our increased production drive as ordered by the Fuehrer, the more weapons and military equipment will the subsequent processing industry then be able to turn out * * *."

It was particularly the steel works in Voelklingen which produced shells, parts of heavy weapons, parts for 75-mm tank guns, barrels for antitank guns, etc.

The employment of prisoners of war in this industry was therefore prohibited in accordance with Article 6 of the Hague Convention, since this regulation decrees that prisoners of war may only be employed in work which is not connected with war operations. It is useless to claim in defense, that the Vichy government agreed to this. This agreement, as was emphasized in the judgment by the United States [Nuernberg] Military Tribunal on 31 July 1948, is ineffective, since France and Germany had declared an armistice; and under these conditions the agreement in question is invalid because it constitutes a breach of international law.

The Court is of the opinion that in accordance with the abovementioned Article 6, the expression "war operations" is to be interpreted as meaning that the prohibition to employ prisoners of war refers to all work which might increase the war potential of their country's enemy.

On the other hand, the same Article 6 of the Hague Convention prohibits the employment of prisoners of war for excessively heavy work. In the Roechling steel works, however, the prisoners of war were employed for the heaviest work (in the rolling mills and coke plants, at blast furnaces, electric furnaces, and in tar-pitch production). This labor must be considered as excessively heavy work and evaluated as constituting a breach of the Hague Convention, particularly if one considers the prisoners' state of health owing to the food which they received. In fact these pris-

oners received an entirely inadequate amount of food and were only able to exist as a result of the parcels which they received from the Red Cross and from their families, while the Italian and Russian prisoners who received no parcels were greatly reduced in number through illness. Conditions of this kind are absolutely contrary to the duties which Article 7, paragraph 2 of the Hague Convention imposes upon the government which has control of the prisoners, and furthermore constitute the crime of ill-treating prisoners of war according to Article II [paragraph] 1 (*b*) of Law No. 10.

Hermann Roechling in his capacity as president of the Reichsvereinigung Eisen, as Reich Plenipotentiary, and as head of the steel works Voelklingen, participated in the above-discussed war crimes against the prisoners who were employed in the works subordinate to the RVE, and particularly in Voelklingen. Thus he actually agreed that the industry of which he was the leading administrator should employ prisoners of war who were placed at his disposal by the Reich government in contravention to the international agreement. He did this not only without raising the slightest protest, but he even demanded that such labor should be made available and submitted plans to his superior authorities for the better utilization of the prisoners of war.

The following in particular is to be mentioned here:

His report dated 17 July 1942, which he made on behalf of the RVE and in which he asks that the management of the Wehrmacht office dealing with prisoners of war should ascertain which of the French and Belgian prisoners of war are specialists in the metal industry.

His letter dated 15 January 1943, addressed to the same office, which is aimed at gaining the release of those French officer prisoners of war who are specialists in the metal industry on condition that they are employed in the iron industry.

So far as the steel works in Voelklingen are concerned, it is *von Gemmingen-Hornberg,* president of the Directorate, and *Rodenhauser,* delegate for manpower, together with Hermann Roechling, who are responsible for the employment of prisoners of war in excessively heavy work connected with war operations.

Section 4

Findings on the Question of Guilt

Accordingly the Superior Court, upon due deliberation, rules as follows:

1. *Maier* is not guilty of the actions charged to him by the prosecution.

2. *Hermann Roechling* is not guilty of a crime against peace (preparation and waging of aggressive wars), nor is he guilty of having tried to get possession of the Perrin patents. But he is guilty of having committed war crimes because, with a view to increasing the war potential of the Third Reich, he—

a. Exploited to the highest possible degree the foundries of the occupied countries, notably those in the Departments Moselle and Meurthe-et-Moselle Sud, and quite particularly the works of the Société Lorraine Minière et Métallurgique at Thionville, of the Tréfileries Julien Wuerth at Reichshoffen—which he intended to acquire for himself, and caused a great deal of material belonging to the industries of the occupied countries—particularly the rolling mills at Joeuf and Ymuiden as well as the shops of Angleur Arthus and Cirey—to be taken away;

b. Participated in the economic spoliation of the occupied countries in a financial and commercial respect, especially by burdening the French economy with a deficit of 180 million francs that resulted from his personal management of the plants in the Department Meurthe-et-Moselle Sud; by acquiring goods and raw materials which had been taken in these countries by the ROGES organization, and by operating in France a purchasing office under the cover-name of Société Lorsar.

c. (1) Took an essential part in carrying out the program for deportation for purpose of forced labor by his persistent applications to this end and by the counsel given by him to the National Socialist government.

(2) Employed in his plants deported persons and prisoners of war for excessively hard labor bearing on war operations, and encouraged the ill-treatment inflicted on those persons with a view of compelling them to work.

3. *Ernst Roechling* is not guilty of having attempted to acquire the Perrin patents for himself. Nor is he guilty of having employed deported persons and prisoners of war for labor. But he is guilty as an accessory to the actions listed under *a* and *b*, which were charged to Hermann Roechling; he is further guilty of having made, for the purpose of supporting the German war potential, inquiries of an economic nature into 13 French enterprises, and of having founded with the same intention the Société de Crédits et d'Investissements which acquired financial interests in the stock of French companies.

4. *Von Gemmingen-Hornberg* does not share guilt in the war crimes of an economic nature committed by Hermann and Ernst Roechling, but he is guilty of having employed, as president of the Directorate of the Stahlwerke at Voelklingen and as a plant leader, prisoners of war and deported persons for excessively hard work,

and work which was in connection with the war operations, and of having encouraged the ill-treatment inflicted on them.

5. *Rodenhauser* is guilty of having employed, in his capacity as a member of the Directorate and delegate for questions of manpower, prisoners of war and deported persons for excessively hard labor and for work which was in connection with the war operations, and of having encouraged the ill-treatment inflicted on them.

The Tribunal resolves to take into consideration the following circumstances:

1. *In favor of Hermann Roechling:* his old age; the fact of his having intervened on various occasions for the liberation of Frenchmen who had been arrested by the Gestapo; and his part in connection with the pardoning of the hostages at Auboué.

2. *In favor of Ernst Roechling:* his humane disposition and attitude toward certain Frenchmen (testimony Fayol).

3. *In favor of von Gemmingen-Hornberg:* certain acts of intervention with a view to improving the lot of the workers, though only in matters of secondary importance.

For the rest the Tribunal has limited itself to a moderate application of (Control Council) Law No. 10, by refraining from a strict application of Article II of this Law.

On the other hand, the Tribunal decides that the examination of the percental irregularities alleged in the appeals is of no importance, since the appeal resulted in the reopening of the whole case before the Highest Tribunal—that, however, the expositions and statements of the first judgment shall have effect only insofar as the present decision repeats the same or refers to it.

The decision of the General Court of 31 May 1948, which excluded from the proceedings a certain number of documents introduced by the prosecution, is being revoked; it is therefore ruled that these documents shall be *retained* in the record of the proceedings.

In the name of the French Commander in Chief in Germany, the Superior Court, after consulting *in camera* and in accordance with the aforementioned pronouncement of guilt; for the purpose of punishing the offenses with which the defendants who have been found guilty, have been charged, and in implementation of Control Council Law No. 10 of 20 December 1945; in consideration of the fact that all the criminal acts with which the defendants have been charged and for which they have been found guilty, have been indicated and defined in Article II of said law and must be punished under this article; since the Superior Court possesses sufficient material on which to base the sentence which is to be pronounced against the defendants who have been found guilty; in consideration of these findings and the findings of the

trial judges which are not at variance with the former; in consideration of the fact that fines are particularly appropriate as an atonement for economic war crimes.

It is ordered—that the contested verdict be set aside as far as it pronounces Hermann Roechling's conviction of crimes against peace, and Ernst Roechling's acquittal; and also as far as the counts pertaining to economic spoliation are concerned which the trial judges did not retain.

As regards the remaining counts of the indictment, the contested verdict is confirmed.

Hermann Roechling is sentenced to ten years' imprisonment, confiscation of his entire property, and loss of civil rights,

Ernst Roechling is sentenced to five years' imprisonment, confiscation of his entire property, and loss of civil rights,

Von Gemmingen-Hornberg is sentenced to three years' imprisonment, confiscation of half his property, and loss of civil rights,

Wilhelm Rodenhauser is sentenced to three years' imprisonment.

The aforesaid, being jointly liable, are sentenced to pay all costs of the proceedings which up to the present day amount to one million and one hundred thousand francs.

Recovery of costs is to be made at once. In case of nonpayment, the defendants will be detained one additional day for each amount equivalent to the exchange rate of DM 10 [Deutsche mark], which remains unpaid after the term of the sentence is served, such additional detention not to exceed 6 months.

The prison terms shall be reckoned as from the day of arrest by the Allied judicial or administrative authorities, in other words—

As regards Hermann Roechling: from 26 May 1945, but excluding the period between 12 May 1946 and 12 October 1946 during which he was temporarily set at liberty, so that he is to be released from prison on 26 October 1955.

As regards Ernst Roechling: from 17 January 1946, excluding the period during which he was at liberty, that is—

a. From 13 May 1946 to 23 September 1946;

b. From 30 June 1948 up to the date of his renewed arrest on the basis of the present verdict.

As regards von Gemmingen-Hornberg: from 1 May 1945, excluding the period during which he was at liberty, that is, from 12 May 1946 to 9 October 1946, which means that his prison sentence will be considered as having been served by his detention pending trial.

As regards Rodenhauser: from 12 September 1946, so that he is to be released on 12 September 1949.

Maier is acquitted.

All other pleas and applications submitted by the parties are dismissed as unfounded.

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INDEX OF DOCUMENTS AND TESTIMONIES IN CASE 11

[This is not a complete index of the evidence which was submitted in the Ministries case. Only those documents and testimonies which are reproduced in volumes XII, XIII, and XIV of this series are listed. It will be noted that, in some instances, listings appear more than once with the same document and exhibit numbers but with different descriptions. In these instances, portions of these documents have been reproduced in the various sections of the volumes in this case in the order most pertinent to the subject matter discussed.]

Document No.	*Exhibit No.*	*Description*	*Vol–Page*
(None)	Pros. Ex. 3139	Extract from the testimony of Field Marshal Keitel before the International Military Tribunal, 5 April 1946, concerning the initial invasion of Czechoslovakia on 14 March 1939.	XII, 876
C–120	Pros. Ex. 143	Cover letter and directives from the High Command of the Armed Forces to the Army, Navy, and Air Force, 3 April 1939, concerning "Case White."	XII, 997
EC–3	Pros. Ex. 1061	Report from General Thomas' Liaison Staff with Goering, 25 November 1941, quoting a memorandum on "General Principles for the Economic Policy in the Newly Occupied Eastern Territories" arising out of Goering's "East Conference" of 8 November 1941.	XIII, 854
EC–38	Pros. Ex. 1059	Extracts from a selection of material approved by Major General Schubert,	XIII, 896

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Document No.	Exhibit No.	Description	Vol–Page
		Chief of the Economic Staff East, for a history of the Economic Staff East.	
EC–75	Pros. Ex. 1944	File note of the Armament Office on a telephone conversation with defendant Pleiger on 19 September 1941, concerning policy and practice in the employment of miners from German occupied Russian territory.	XIII, 963
EC–86	Pros. Ex. 2491	Report of Working Staff for Foreign Countries, 10 October 1944, including breakdown of occupation costs, rates of exchange and purchasing power of reichsmark (noting black market influences), in citing requisitions of funds in occupied countries.	XIII, 911
EC–207	Pros. Ex. 1057	Letter from Armed Forces Operations Staff, Armed Forces High Command, to defendants Koerner and Puhl, and others, 4 July 1941, transmitting the text of the Hitler decree of 29 June 1941 concerning Goering's jurisdiction in utilizing the economy of the newly occupied eastern territories.	XIII, 847
EC–248	Pros. Ex. 950	Letter from General Keitel to defendant Koerner, 14 June	XII, 473

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		1937, concerning cooperation of Plenipotentiary General for War Economy and Plenipotentiary for the Four Year Plan.	
EC–267	Pros. Ex. 3823	Memorandum of General Thomas' Office, 10 September 1942, reproducing the first part of a report on economy by the administrative staff of the military commander in France, 1 February 1942.	XIII, 793
EC–278	Pros. Ex. 3768	Goering directive concerning the appointment of Plenipotentiaries General for fields of special importance, 16 July 1938.	XII, 502
EC–347 (*also* Koerner 450 Koerner Def. Ex. 176)	Pros. Ex. 1058	Extracts from the handbook (Green Folder) of the Economic Executive Staff East, September 1942, containing "Directives for the Leadership of Economy in the Newly Occupied Eastern Territories."	XIII, 867
EC–373	Pros. Ex. 942	Extracts from a speech by General Thomas, Chief of the Military Economic Staff of the Armed Forces, to the Reich Chamber of Labor, 24 November 1936, concerning military economy and the Four Year Plan.	XII, 452

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EC–410	Pros. Ex. 1286	Goering directive to Reich Ministers, Divisions and Plenipotentiaries General of the Four Year Plan, 19 October 1939, concerning "Economic Administration" in the "Incorporated" part of Poland and in the Government General, and the task of Main Trustee Office East with respect to Polish property.	XIII, 718
EC–416	Pros. Ex. 940	Minutes of the meeting of the Ministerial Council, 4 September 1936, at which Goering discusses and reads Hitler's memorandum on the Four Year Plan.	XII, 439
EC–419	Pros. Ex. 1165	Letter from defendant Schwerin von Krosigk to Hitler, 1 September 1938, concerning the financial situation of Germany, the financing of armament, and the clarification of foreign policy.	XII, 509
EC–485	Pros. Ex. 2477	Extracts from the record of a conference on 7 October 1940, under the chairmanship of Goering, with copies to more than thirty persons including defendants Schwerin von Krosigk and Koerner, concerning the economic exploitation of the occupied western territories.	XIII, 760

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L–221	Pros. Ex. 527	Martin Bormann's memorandum of a conference of Hitler, Rosenberg, the defendants Lammers, Keitel, Goering and Bormann on 16 July 1941, concerning the organization and administration of German occupied territory in the East.	XII, 1291
NG–037	Pros. Ex. 1249	Extracts of 13 documents from files of the German Foreign Office, 16 November 1944 to 18 January 1945, concerning the Mesny matter.	XIII, 34
NG–143	Pros. Ex. 333	Memorandums concerning the German Military Mission in Rumania, 20 September to 18 October 1940.	XII, 1253
NG–151	Pros. Ex. 1551	File note of the Reich Chancellery on a State Secretaries Conference in the office of defendant Stuckart, 21 April 1943, submitted to and initialed by defendant Lammers, concerning a proposed decree limiting legal rights of Jews.	XIII, 299
NG–183	Pros. Ex. 1680	Correspondence and draft correspondence of the German Foreign Office, June and July 1942, concerning the transport of Jews from France, the Netherlands, and Belgium to Auschwitz.	XIII, 233

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NG–1123	Pros. Ex. 3902	Letter from defendant Lammers to Bormann, 7 June 1941, stating Hitler had rejected a proposed decree on stateless Jews and adding as "Confidential information" Hitler's reason that "After the war there would not be any Jews left in Germany anyhow."	XIII, 167
NG–1162	Pros. Ex. 581	Extracts from the record of the first meeting of the General Council of the Four Year Plan, under the chairmanship of defendant Koerner, on 20 December 1939, at which State Secretary Backe stated that one and one half million Poles must be allocated as agricultural workers in Germany.	XIII, 945
NG–1177	Pros. Ex. 461	Four communications from the files of the Reich Chancellery, 7 December 1939 to 18 January 1940, concerning the extension of tasks of the General Council for the Four Year Plan, and related matters.	XII, 529
NG–1179	Pros. Ex. 2604	Letter from defendant Lammers to Reich Leader Martin Bormann, Chief of the Party Chancellery, 31 October 1941, concerning the authority of the	XIII, 969

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		Reich Minister of Labor and suggesting written concurrence by Bormann.	
NG–1190	Pros. Ex. 2603	Letter from the Reich Labor Minister, Franz Seldte, to defendant Lammers, 21 March 1940, reporting upon the general labor situation; the plan of making 800,000 Poles available for German agriculture; the covering of labor requirements in the mines by utilizing foreign workers, and related matters.	XIII, 953
NG–1203	Pros. Ex. 2601	File Note of the Reich Chancellery, 17 November 1939, concerning the use of Polish prisoners of war and civilians in agricultural production.	XIII, 944
NG–1221	Pros. Ex. 460	Goering's decree on the execution of the Four Year Plan, 22 October 1936, establishing a ministerial council, appointing defendant Koerner as Goering's representative for all current business, setting forth the responsibilities of divisions and agencies, and related matters.	XII, 447
NG–1280	Pros. Ex. 529	Letter from defendant Lammers to Rosenberg, 18 July 1941, transmitting four Fuehrer decrees and noting that the decrees are not to be published.	XII, 1298

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NG–1330	Pros. Ex. 2624	Teletype from Lohse, Reich Commissioner for the "Ostland," to Martin Bormann, 23 March 1944, concerning conflicting demands for conscription of thousands of Estonians and Lithuanians by various German agencies and requesting a Hitler decision that all demands "to Ostland" go through channels.	XIII, 1068
NG–1408	Pros. Ex. 977	Covering letter to council members and extracts of statements made by State Secretary Backe at the sixth meeting of the General Council of the Four Year Plan, 14 February 1940, advising safeguarding of the next harvest, utilization of Polish workers and prisoners of war and the probability of having to "cause by force" the moving of necessary Polish workers to Germany.	XIII, 949
NG–1429	Pros. Ex. 377	Telegram from President Roosevelt to Hitler, 15 April 1939, concerning settlement of international issues by the "threat of arms," requesting assurance that Germany would not attack or invade specified countries, and related matters.	XII, 1003

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NG–1442	Pros. Ex. 498	Letter from defendant Lammers to Schickedanz, 31 May 1940, awarding him a further lump sum as Lammers' representative with the Governor General of the occupied Polish territories and with the Reich Commissioner for the occupied Norwegian territories.	XII, 1070
NG–1467	Pros. Ex. 1304	Exchange of letters between defendant Lammers and Reich Leader SS Himmler, 29 September and 4 October 1939, concerning the draft of a Hitler decree "For the strengthening of Germanism."	XIII, 138
NG–1492	Pros. Ex. 2575	Letter from defendant Lammers to the Reich Ministers, 21 May 1940, transmitting a copy of Hitler's decree of 19 May 1940 on Goering's authority to issue orders to the Reich Commissioner in Holland in connection with the Four Year Plan.	XII, 534
NG–1492	Pros. Ex. 2575	Letter from defendant Lammers to the Reich Ministers, 21 May 1940, transmitting for confidential information a Fuehrer decree on Goering's authority to issue directives to the Reich Commissioner for the occupied Netherlands.	XIII, 751

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NG–1509	Pros. Ex. 2635	Letter from Sauckel to defendant Lammers, 28 June 1944, reporting upon developments in procuring labor from Italy and requesting support from Lammers.	XIII, 1082
NG–1516	Pros. Ex. 1704	Memorandum of defendant Woermann to Department Germany III, 19 May 1942, concerning the exemption of certain foreign Jews from Jewish measures in France and the Netherlands.	XIII, 229
NG–1517	Pros. Ex. 1457	Note from Luther to defendant von Weizsaecker, with copies to defendant Woermann and others, 24 September 1942, concerning von Ribbentrop's instructions on speeding up evacuation of Jews from Europe and noting that all steps taken by Department Germany will be submitted to von Weizsaecker for approval.	XIII, 255
NG–1645	Pros. Ex. 1315	Extract from article in the newspaper "NS-Landpost," 7 June 1940, concerning the task of defendant Darré in connection with agriculture in Poland, the utilization of Germans or racial Germans for agricultural management, and related matters.	XIII, 151

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NG–1688	Pros. Ex. 528	Fuehrer decree concerning police security within the newly occupied eastern territories, 17 July 1941, signed by Hitler, Keitel, and defendant Lammers.	XII, 1303
NG–1688	Pros. Ex. 528	Decree signed by Hitler, Keitel and defendant Lammers, 17 July 1941, making "police security" in the newly occupied eastern territories a matter for Reich Leader SS Himmler.	XIII, 168
NG–1689	Pros. Ex. 1749	Memorandum from defendant Steengracht von Moyland to Rosenberg, 22 January 1944, suggesting the appointment of a liaison officer to the "Office for anti-Jewish Activity Abroad" of the Foreign Office and other means of collaboration.	XIII, 329
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NG–4844	Pros. Ex. 3532	Coded telegram from defendant Woermann to the German Embassies in London, Paris, and Rome, 15 March 1939, concerning defendant von Weizsaecker's discussion with Sir Nevile Henderson on the occasion of the British Ambassador's making inquiries about the Czechoslovak situation on 14 March 1939.	XII, 885

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NI–3777	Pros. Ex. 1976	Goering decree, 27 July 1941, concerning German economic policy in the Occupied Eastern Territories, its relation to war economy, creation of the monopoly companies and trustee administration, and related matters.	XIII, 848
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NO–724	Pros. Ex. 1908	Letter from SS Brigadier General Frank to the SS Headquarters Administration, Lublin, and to the Chief of Administration in the Auschwitz concentration camp, 26 September 1942, concerning the utilization and distribution of property and personal	XIII, 256

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2788–PS	Pros. Ex. 59	Notes on a conference in the German Foreign Office on Sudeten - German questions, 29 March 1938, attended by von Ribbentrop and defendant von Weizsaecker, among others, concerning the demands of Henlein's Sudeten-German Party upon the Czechoslovak Government.	XII, 788
2798–PS	Pros. Ex. 122	Hewel's record of the Hitler-Hacha conference in Berlin in the presence of Chvalkovsky, Goering, Keitel, and defendants von Weizsaecker, Meissner,	XII, 867

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3363-PS	Pros. Ex. 2501	Circular letter from Heydrich to chiefs of all Einsatzgruppen with copies to	XIII, 133

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3392-PS	Pros. Ex. 16	Letter from Seyss-Inquart to defendant Keppler, 3 September 1937, concerning relations with various officials of the Austrian Government and Nazi Party in Austria.	XII, 688
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3473-PS	Pros. Ex. 20	Letter from the defendant Keppler to Goering, 6 January 1938, concerning the activities and positions of Seyss-Inquart and Captain Leopold, together with note concerning Goering's decision on questions raised.	XII, 703

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